

He said yes, there was a truck in the garage. I believe he said it was a green Chevrolet truck also.

He said that that truck belonged to a man by the name of Frank White and that White had rented the garage for \$20 for a matter of a month. The truck remained there for about two or three weeks. The truck and the man disappeared and he don't know where any of them went.

We also asked Mr. MacLeod—

Mr. Walsh: I suggest that somebody asked the question.

The Court: Which one?

By Mr. Downing:

Q. Who asked it?

A. I did.

597 The Court: All right. Go ahead.

By Mr. Downing:

Q. Do you recall anything else that was said at that particular time?

Mr. Walsh: I object to that unless it relates to this matter that is at issue here.

The Court: You may answer.

By The Witness:

A. Mr. MacLeod concluded his remarks by saying that if he had known then, if he had known before what he knew at that time, he wished he had never met Mr. Gordon.

By Mr. Downing:

Q. Do you recall anything else that was said at that time?

Mr. Walsh: I object to this, unless it is related to the issue here.

The Court: He may answer.

Mr. Walsh: I assume the prosecutor knows what he is doing.

By Mr. Downing:

Q. Do you recall anything else that was said?

A. We spoke, spoke to Mr. MacLeod in regard to James Irwin Marshall and Albert Swartz and asked him if he knew an Albert Swartz from Detroit, Michigan, to 598 which he replied he did not.

I exhibited a photograph of James Irwin Marshall to Mr. MacLeod.

He said he had never seen or known anybody that looked like the photograph which I showed him.

Q. And do you recall anything else in that conversa-

tion that you had with the defendant MacLeod at that time and place?

A. No, I do not.

Q. Did Mr. MacLeod sign a statement at that time and place?

A. No, he did not.

Q. Was that the only conversation you have had with the defendant MacLeod other than the one in the morning of November 8th and the one about which you have testified?

A. Well, no. I met him briefly for about 5 minutes on the occasion, about three times after time. At that time in the Palmer House Hotel, I believe the conversation at that time—

Q. Was not relevant to this matter?

A. Absolutely not, just in passing.

Q. Other than that, that is the only time you have  
599 had any conversation with the defendant MacLeod?

A. That is all.

Mr. Downing: At this time, if your Honor please, the Government would like to offer in evidence, Government's exhibits 68 and 69, Government's exhibits 79 to 82, and 84 through 88.

The Court: Very well.

Mr. Downing: They may cross examine.

The Court: I will hear any objections after the cross examination.

*Cross Examination*

By Mr. Walsh:

Q. Mr. Higgs, after you left 1150 Lake Shore Drive with Mr. MacLeod, where did you go?

A. We went directly from 1150 Lake Shore Drive to 215 East Erie Street.

Q. How long were you there?

A. We were probably there an hour or more.

Q. What time did you leave 1150 Lake Shore Drive that morning?

A. I would say close to 11 o'clock.

Q. Now, how many agents accompanied you to 215 E.  
Erie Street?

600 A. From 1150?

Q. Yes.

A. I believe two.

Q. That is, there were four of you in one automobile?

A. Four of us.

Q. Your automobile, a bureau car?

A. That is right.

Q. Did you all enter the premises at 215 East Erie?

A. No, we didn't.

Q. Who went in?

A. I went in with Mr. MacLeod, and I believe Agent Williams went in with us. Mr. Dailey remained outside.

Q. Now, what time of day was it when you saw him at the Palmer House?

A. About 10 or 10:30 in the morning.

Q. About 10 or 10:30 in the morning?

A. Yes.

Q. As a matter of fact, you had compelled him or requested him to let you take his picture while he was at the Bureau office that day, didn't you, the day before your meeting at the Palmer House? /

A. Compelled him to take his picture?

Q. Yes.

601 A. His photograph was taken while he was there.

Q. Were his fingerprints taken, too?

A. Yes, they were.

Q. As a matter of fact, you asked him to oblige you by meeting him at the Palmer House to initial this the next day, didn't you?

A. That is correct.

Q. Is that something that had been overlooked the day before?

A. Well, he was asked to do it and evidently he neglected to do so. He completed that, I think, the next day or second day after that.

Q. Well, was it the day following his appearance at the Bureau?

A. I think it was two days later.

Q. Two days later?

A. Yes.

Q. Did you ask him to sign them while he was there at the Bureau office?

A. Yes, I did.

Q. Did he refuse?

A. No, he did not refuse. I think he just overlooked it. Nobody saw to it, it was done at that particular time. So it got by without being done.

602 Q. I assume up in this third floor washroom where you were located on the 27th day of July you overheard no conversation between any parties in the alley?

A. No, I didn't.

Q. And how was this young man who went around to the front of 215 East Erie Street, how was he dressed that day?

A. He had on a white shirt, no tie, and what appeared to be brown checked trousers.

Q. He had a hat?

A. No hat.

Q. Was he the driver of the Buick?

A. Yes, he was.

Q. Now, the Buick drove into the alley, did it, from the north?

A. From the north, that is right.

Q. This Government exhibit 86 that I show you.

A. Yes.

Q. Will you show us where the car entered the alley?

A. The car entered the alley from this point here, pulled along to this point here, and parked, and the driver got out and went around the front of the building.

Q. Did you recognize the occupants of the car, as they drove in?

A. No, I didn't.

603 Q. Did you know either one of them when they came closer to you?

A. No, I did not.

Q. Did you recognize either one of them that day?

A. No, I did not.

Q. And now, Marshall was out of your view then when he walked around out of the street?

A. That is right.

Q. This young man whom you later identify as Marshall, is that right?

A. That is right.

Q. You have met him many times since then, or several at least?

A. Once or twice.

Q. How long was he gone?

A. Thirty seconds to a minute.

Q. Did MacLeod get in their car when he came out?

A. No, he did not.



Q. Did he walk around through the alley in your view?

A. He did.

Q. And through which door do you now say or did you say he entered the garage?

A. Through this large door here.

Q. Large door?

Mr. Downing: On Government's exhibit 87.

604 Mr. Walsh: On Government's exhibit 87.

By Mr. Walsh:

Q. Did you see him use a key?

A. Yes, I did.

Q. You saw him use a key?

A. Yes. He took a key from his pocket and unlocked the lock.

Q. And you saw him unlock the lock?

A. Yes.

Q. From your position, this alley runs in which direction?

A. This alley here runs east and west.

605 Q. And your position was where, with relation to east or west of this door?

Mr. Callaghan: May I look and see what he indicates, and it may save time?

The Court: Get behind him here.

By The Witness:

A. My position in relation to this door, I pointed out to you here now, and will also explain it.

By Mr. Walsh:

Q. Just tell me whether you were east or west of the door.

A. I was southwest of the door.

Q. Well, how far west?

A. Between 100 and 150 feet.

Q. How far south?

A. The width of this alley, which is probably 20, 25, 30 feet.

Q. But 100 feet west?

A. That is about right, 100 feet.

Q. And then which direction did this window from which you were looking—which direction did that window face?

A. The window faces north.

Q. And were you leaning out the window?

606 A. Yes, I was.

Q. Now, how deep would you say this inset is here between the alley and the door, the surface of the door?

A. The face of the door is six or eight inches.

Q. And is there a padlock?

A. There is.

Q. Is that the lock that is or was on the door?

A. I cannot testify as to that fact, but there was a lock similar to that.

Q. Did you examine the door closely at any time?

A. Yes, I have examined the door very closely.

Q. Well, on that date?

A. No, not on that date.

Q. Or just prior to it?

A. Just prior to it, I believe.

Q. And was it locked with a padlock?

A. Yes, it was.

Q. At the west end of the door?

A. The west end of the door.

Q. And in close to the corner formed by the right angle—the right angle corner formed by the inset and the door, right?

A. The lock would be about three or four inches 607 from the brick surface there.

Q. And you are sure now that you were able to see that from the window, that you were able to see the lock from the window, the third floor washroom window?

A. I won't say that I can see the lock from the window, but I could see the lock as he took it off, and I could see him take the key from his pocket and insert it.

Q. Now, how many people reside in this building at 1150 North Lake Shore Drive?

A. I do not know.

Q. More than Mr. MacLeod?

Mr. Downing: Objection, your Honor. It is immaterial. He says he doesn't know.

The Court: Well, if he knows it is more than he, he can answer, if he knows.

By Mr. Walsh:

Q. Let me refresh your recollection in this fashion: You have referred to it here for the benefit of everybody as the residence of Mr. MacLeod.

Now, how big is the building?

A. You mean the part occupied by Mr. MacLeod, or the entire—

Q. The entire building.

608 A. The entire building, I believe, is either three or four stories, and it occupies a lot probably 50 by 90.

Q. And does it consist of many apartments and rooms?

A. I wouldn't know. I have never been in it.

Q. Well, you went to Mr. MacLeod's apartment?

A. I have been in Mr. MacLeod's portion of the building, yes.

Q. What is it, a room or an apartment?

A. His portion of the building consists of about three or four small rooms which he told me he had built there himself.

Q. That he had built there?

A. Yes. He decorated and done all the work, built it out of the garage.

Q. He didn't build the building?

A. No, no, the interior.

Q. As a matter of fact, you are acquainted with the ownership and management of the building, aren't you?

A. At 1150 Lake Shore Drive?

Q. Yes.

A. Not to my knowledge.

Q. Well, you know, do you not, that Mr. MacLeod, doesn't run the building, that he is simply a tenant  
609 there, don't you?

A. That is my impression merely. I didn't ask him.

Q. You know of nothing contrary to that?

A. No.

Q. Did you notice how many license plates there were on that car?

A. You are referring to the Buick, sir?

Q. Yes, sir.

A. I know that the automobile had a rear license plate, but I wouldn't swear that it had a front license plate.

Q. Well, is there any difference between the front and the back? Does that refresh your recollection in any respect?

A. To this extent, that I didn't notice any other license plate except the 1950 Michigan, EM-9645.

Q. And when the car drove into the alley, in the first place, I believe that is on Government's Exhibit 6—that is the alley?

A. Yes, sir.

Q. Did you see any license plate on it immediately when it drove in?

A. I do not recall noting the license plate when the car entered the driveway, because I had seen several automobiles come in there, and I didn't know that that car had 610 any connection with this case at that time.

Q. Now, did the car make a left turn when it reached the corners of the alleys?

A. Going out?

Q. Well, it drove into the alley and came south?

A. Right.

Q. And when it reached the end of the building, did it make a left turn?

A. Left turn is correct.

Q. And how far did it proceed?

A. It proceeded the width of the building at 215, there, and about probably a third of 217, and stopped just before the double door there.

Q. Did you make a note of the license plate then?

A. Yes, I did.

Q. Did you write it down?

A. I did.

Q. And was that the first time you saw a license plate?

A. That is the first time that I took definite notice of a license plate.

Q. Now, did it drive in? Was the car backed into the garage?

A. That is correct.

611 Q. Or did it drive in nose forward?

A. It backed in.

Q. Which of the three men drove the car?

A. The gentlemen whom I now know is Mr. Marshall, James Irwin Marshall.

Q. Now, did you note this door that is to the west of the two double garage doors?

A. This first door?

Q. Yes, as shown on Government's Exhibit 87.

A. Yes.

Q. That is not a car entrance door; that is just a pedestrian entrance door?

A. That is right.

Q. Does that door give entrance to the garage?

A. Of my own knowledge I cannot say that it does or does not, but I have been told that it does.



Q. Did you observe that there were persons living upstairs of the garage?

A. I am acquainted with one gentlemen who lives upstairs.

Q. You saw them enter?

A. Yes, I have seen them go and come.

Q. And now, did all three go into the garage?

A. No, only—

612 Q. When the door was opened?

A. Only Mr. MacLeod and Mr. Marshall.

Q. And this third man, you call him Swartz, stayed outside?

A. He stayed outside except for a brief moment he stepped inside the door between me and the Buick, the automobile that was backed in there. He stepped back out into the alley.

Q. Did you see him make any gestures?

A. I don't recall any particular action on the part of Mr. Swartz, no.

Q. Will you describe Mr. Swartz in appearance?

A. On that day he was wearing a blue gabardine sport outfit, a jacket and a pair of slacks, dark shoes, no hat, smoking a cigar, and he has a bald spot on the top of his head back here (indicating); and he is a man just over forty years of age.

Q. Describe Mr. Marshall as he appeared to you that day.

A. He was wearing a white shirt, no tie, brown or tan checkered slacks, no hat, and I recall that he had very curly wavy looking hair.

Q. Did he wear glasses?

A. No glasses.

613 Q. Did any of them wear glasses?

A. No glasses, no.

Q. Will you describe Mr. MacLeod as he was dressed that day?

A. Mr. MacLeod had on a white shirt, no tie, his collar was open, and he had on a pair of what looked like gray slacks that needed a little press.

Q. They needed a press?

A. Yes, he looked a little wrinkled like he probably had been working maybe, and well, of course, his facial characteristics were exactly the same as he is now.

Q. Now, as a matter of fact, in this conversation that



you had with Mr. MacLeod down at the office of the FBI, didn't he state to you that he did not desire to discuss the matter at all until he had seen counsel?

A. No, he didn't.

Q. Did you, or did any of the other Agents in your presence ask him if he was always this quiet?

A. Not to my knowledge.

Q. Did you or any of the Agents in your presence, either there or any of the places you were with him that day, ask him if he wasn't even willing to talk about the weather?

A. I don't recall those words, no. He talked quite  
614 freely at 215 East Erie Street.

Q. Now, you didn't reduce his remarks to a written statement?

A. No, I did not.

Q. Well, who made notes of his conversation?

A. I did.

Q. You made them?

A. Yes, sir.

Q. Did you ask him to sign a statement?

A. At the conclusion of the interview we gave him an opportunity to. We asked him if he would like to.

Q. Asked him what, you said?

A. Asked him if he wanted to give us a statement of what he told us.

Q. He had talked to you quite a while from what you say, isn't that right?

A. That's right.

Q. How long?

A. From the time Mr. MacLeod on November 8 until I last saw him go out the door, probably over two hours.

Q. He wasn't arraigned and taken before a commissioner or arrested? You didn't arraign him as a result of this detention, did you?

A. On November 8 I believe he was arraigned, yes.

615 Q. On November 8?

A. Yes.

Q. Was his bail fixed?

A. I believe it was.

Q. For how much?

Mr. Downing: Objection, your Honor. That is a matter of record.

The Court: Sustained.

Mr. Walsh: Well, if your Honor please, he says now that he was arraigned, and yet he says he walked out the door.

The Court: I sustained the objection.

By Mr. Walsh:

Q. Well, how many places did you go with him that day?

A. I went from 1150 Lake Shore Drive—this is November 8 you are talking about?

Q. This is the day of these conversations that you have been talking about.

A. 1150 Lake Shore Drive, 215 East Erie, and 1900 Bankers Building, Chicago, Illinois.

Q. Did you have Mr. MacLeod's picture prior to that date?

A. Yes, I had some photographs of Mr. MacLeod.

616 Q. Did you have his picture in the fashion you wanted it taken that day, or in the fashion that you had it taken that day, a still-posed photograph?

A. No.

Q. But you had been taking pictures from your third floor window?

A. That's right.

Q. And did you have his finger prints on any form card of the Bureau?

A. I had never taken Mr. MacLeod's finger prints prior to November—

Q. If they existed, you didn't know about it?

A. No.

Q. Mr. MacLeod told you, I think you told us on direct examination—Did Mr. MacLeod tell you that he only received a third of the proceeds?

A. That is correct.

Q. Of the rooming house?

A. Yes.

Q. Are you sure that he didn't tell you that it was a half?

A. Mr. MacLeod said that he took one-third of the income, and the other two-thirds went to Mr. Gordon.

Q. Well, if I told you that your testimony disagreed 617 with that of Agent McCormick in that respect, who was present at these interviews, I take it?

A. Yes, he was.

Q. If Mr. McCormick tells us that Mr. MacLeod said one-half, is he wrong?

A. I would say that Mr. McCormick was wrong.

Q. Was there any conversation about the sale of jewelry and stockings at 215 East Superior?

A. East Erie.

Q. 215 East Erie.

A. There was, yes.

Q. Did you see any such merchandise there?

A. Yes, I did.

Q. Did you take any?

A. No, I did not.

Q. Did any of the other Agents in your presence take any?

A. Any jewelry?

Q. Any jewelry or any stockings.

A. I believe one of the Agents who came up there after we first went there—

Q. He was there while you were there, though?

A. He was there while I was there.

Q. Did he leave with you?

618 A. He left with me.

Q. He took some stockings with him?

A. I believe Mrs. Jones gave him a box or two or three—I don't know, but one box of nylon hose which he took with her permission.

Q. Did he pay for them?

A. No.

Q. Now, did you see any of the operations in the garage while these men were in the garage, from your window, on July 27th?

A. Inside of the garage? No, I did not.

Q. And all you know about it is that when the car came out—did the car come out and drive east towards your place, or west, rather, towards your position?

A. West towards my position.

Q. And was it about even with you when it arrived at the corner of the alley?

A. Almost, almost even with me, yes.

Q. And did you have your camera with you?

A. No, I did not at that time.

Q. But you did see film or cases marked "Film"?

A. I saw cases marked "Kodak".

Q. From your third floor window?

A. Right.

619 Q. How many of those cases did you see?

A. The back seat of that car was full to the window level, from the floor up to the window level, and I would estimate—

Q. Did you see?

A. That I saw.

Q. You could only see part of what was in the car, I take it?

A. That's right.

Q. How many were within your view?

A. About eight.

Q. And how many times did you see the word "Kodak"?

A. Three times, I believe.

Q. Three times you saw the word "Kodak" on these cases?

A. Yes.

Q. Now, you didn't see anything in the trunk of the car?

A. No, the trunk was closed.

Q. And you were on the third floor. Did you see anything taken off the truck?

A. No, I did not.

Q. Do you know who loaded the car, if it was loaded in the garage?

620 A. Mr. Marshall told me who loaded the car.

Q. Not what somebody told you. Not what somebody told you.

A. I did not see the car loaded.

Q. On this date that you met Mr. MacLeod at the Palmer House, did you again ask him to sign a statement?

A. No, I did not.

Q. As a matter of fact, you never asked him to sign a statement, did you?

A. I did on the occasion on which I previously testified.

Q. Is Mr. McCormick's memory faulty again if he told us that such and such question was not asked?

Mr. Downing: I object to that.

The Court: He may answer.

By the Witness:

A. If anybody said that Mr. MacLeod did not have the opportunity to sign a statement, they would be wrong.

Mr. Walsh: I move to strike that as not responsive.

The Court: The motion is denied.



By Mr. Walsh:

Q. I asked whether that question was asked, whether he was asked to sign a statement.

621 A. He was.

Q. By whom?

A. I asked him.

Q. In whose presence?

A. In the presence of Mr. McCormick.

Q. Where did this arraignment take place that you told us occurred? Which of the three places that you went to?

A. I only went with Mr. MacLeod to the places which I stated previously, and Mr. MacLeod was not arraigned at either of those three places.

Q. As a matter of fact, he was not arraigned, was he, that day?

A. It is entirely possible that he wasn't arraigned that day:

Q. Don't you know it, as a matter of fact?

A. Now that you have refreshed my memory, yes.

Q. Did you show Mr. Marshall or Mr. MacLeod a picture during your conversation at 215 East Erie?

A. Did I show him a photograph of 215 East Erie?

Q. Yes.

A. I believe I did.

Q. Whose photograph, or what photograph?

A. I believe the photograph was a photograph of  
622 Mr. MacLeod at the rear of 215 East Erie.

Q. Taken on another occasion, or on the same day?

A. What do you mean by that?

Q. Was it taken on November 8?

A. No, it was not taken on November 8.

Q. All right. Was it taken on July 27?

A. No, it was not.

Q. Was it taken after July 27?

A. I believe it was.

Q. How long after?

A. About four or five days.

Q. What was Mr. MacLeod doing?

A. He was removing cardboard cartons from the convertible Oldsmobile and taking them in the rear door at 215 East Erie Street.

Q. Were you still in the same place, the third floor window?

A. The same.



Q. Could you see what was on those cartons?

A. There were no marks on the side of those cartons.

Q. Was that the same carton that you saw on the 27th of July?

A. No, sir.

Q. Well, did you show him that picture to indicate 623 to him that he was under observation, and to frighten him into a statement?

Mr. Downing: I object to that remark.

The Court: Sustained. Would you care to rephrase your question?

By Mr. Walsh:

Q. Did you show him that picture simultaneously with the request that he tell you something?

A. No.

Q. Now, did you show him any other picture? Did you show him the picture of any other individual at that time and place?

A. Yes, I did.

Q. At 215 East Erie?

A. Excuse me now. I am understanding you now to say, did I show him another photograph at that time, meaning the interview?

Q. No. You told us that at 215 Erie, you showed him the picture of himself, is that right?

A. I wasn't at 215 East Erie when I showed him the picture.

Q. That is what I understood you to say. But where did you show him that picture?

A. I showed him the photograph at the time he was 624 interviewed in the FBI office in Chicago.

Q. Well, he was being interviewed at 215 East Erie wasn't he?

A. I spoke with him at 215 East Erie.

Q. And he was being interviewed at 1150 Lake Shore Drive, wasn't he?

A. I spoke with him briefly there also.

Q. Well, when is the first time you showed him a picture? Now, where were you?

A. In 1900, Bankers Building, Chicago, Illinois.

Q. 1900?

A. Right.

Q. Not 2000?

A. Well, if you want to be technical about it, I think it was 2019.

Q. Well, is that the nineteenth floor or the twentieth floor?

A. The twentieth floor.

Q. Now, what picture did you show him first?

A. I believe I showed him a photograph of himself removing a cardboard carton from a convertible Oldsmobile, and taking it into the rear door.

Q. A convertible Oldsmobile?

A. Right.

625 Q. What color was the Oldsmobile?

A. Maroon.

Q. What was on that package?

A. Nothing. There were no marks on it.

Q. If there were, you didn't see them?

A. No, sir.

Q. And nothing indicating "Kodak" in any amount?

A. No.

Q. What other picture did you show him at that time?

A. I think the only photographs exhibited to Mr. MacLeod on that occasion were a series of photographs made of him removing the cartons from that automobile.

Mr. Walsh: That is all.

The Court: Do you have any questions.

*Cross Examination*

By Mr. Callaghan:

Q. ~~Mr.~~ Witness, will you look at Government's Exhibit 84 and can you point out where you were on that day, July 27th? Does it show in that picture?

A. If this fire escape were removed, you would be able to see right behind. You can see the ledge right through the steps.

Q. You were on a building at the window on the 626 extreme righthand of the—that window looking from the third floor.

A. On the third floor.

Q. Is that correct?

A. Correct.

Q. Does that building set back of that alley?

A. Yes, it does.

Q. By "that alley" I mean the alley that runs east and west back of 215 East Erie Street.

A. That is correct.

Q. You said in response to one of Mr. Walsh's questions that you were the width of the alley westward—

A. South.

Q. Southward from which the picture was taken, and 150 feet to the west?

A. About 100 or 150 feet west, and the width of the alley south.

Q. Well, at the point of this building, there is a retaining wall, or a wall to separate that parking space back of the adjoining building, is there not?

A. There is.

Q. Now, that building drops back there, does it not, about 40 feet, where there is a dock of the American Express Company?

627 A. The dock may be 40 feet back, but the building up here is not that far back.

Q. How far is the building from the alley?

A. Less than the length of an automobile.

Q. So that you would then be southward from your point of picture taking, the width of the alley plus the distance where an automobile could pull in to back in to that dock?

A. No, I don't think—I don't understand what you are trying to say to me, no.

I might attempt to explain it to you, if you would like me to.

Q. Well, I think the only picture that shows that is this Exhibit 4, Mr. Witness, of the alley that runs east and west.

A. Yes, sir.

Q. It runs westward beyond the north-and-south alley, doesn't it? And there is a space in this area that is not shown in this picture?

A. That is right, a loading dock here.

Q. About 75 by 75 feet, roughly?

A. 50 by 50.

Q. All right.

Now, the alley proceeds westward about 50 feet, 628 and there is also a drop-back from the alley to this loading dock at the American Railway Express Company, isn't there?

A. There is.

Q. Was this picture, Government's Exhibit 88—

A. Yes, it was; it is.

Q. I have not asked a question yet.

Was this picture, Government's Exhibit 88, taken from the third floor premises of "Popular Mechanics Magazine"?

A. It was.

Q. Who was with you on July 27th in this washroom on this floor?

A. Nobody. I was alone.

Q. Did you have a camera with you at that time?

A. No, I didn't, not at that time.

Q. Was this film known as Government's Exhibit 88 taken with a telescopic lens?

A. No.

Mr. Callaghan: That is all.

The Court: Do you have any redirect?

629

*Redirect Examination*

By Mr. Downing:

Q. With respect to the photographs shown to Mr. MacLeod on November 8, you did show Mr. MacLeod, I believe you testified, that you showed Mr. MacLeod a photograph of himself in one instance, is that right?

A. That is right.

Q. Did you also show him a photograph of James Irwin Marshall?

Mr. Walsh: I object to this.

The Court: Overruled.

By the Witness:

A. I did show him a photograph of Mr. Marshall.

By Mr. Downing:

Q. Now, with respect to the car exhibited or shown in the photograph, wherein Mr. MacLeod was removing a carton from an Oldsmobile, do you know whose Oldsmobile that is?

A. That is Mr. Kenneth Gordon's car.

Mr. Downing: That is all.

The Court: Is there any recross?

Mr. Callaghan: No recross.

The Court: Do you have anything else to offer?

630

*Recross Examination*

By Mr. Walsh:

Q. Did you make notes of your interview with Mr. MacLeod?

Mr. Downing: Objection. That is not proper recross.

The Court: Objection sustained. It is not proper recross. Confine yourself to what was asked on redirect.

By Mr. Walsh:

Q. When you showed this picture of Marshall to Mr. MacLeod in the office of FBI, Chicago, Illinois, one of you discussed this case with Mr. McCormick?

Mr. Downing: I object to that.

The Court: Sustained.

By Mr. Walsh:

Q. Well, can you explain your failure to tell us about Marshall's picture on cross examination?

Mr. Downing: I object to that, if your Honor please, to the form of the question.

The Court: Sustained.

By Mr. Walsh:

Q. Have you and Mr. Downing discussed this case?

A. Yes, sir.

631 Q. And your testimony?

A. Yes, sir.

Mr. Walsh: That is all.

Mr. Downing: That is all.

The Court: We will take a recess for ten minutes.

(Recess taken.)

632 The Court: You may proceed.

Mr. Downing: Your Honor, please, there is an offer pending.

The Court: I had not ruled on that.

Mr. Downing: 68 and 69, the two seals, and the photographs, Government's exhibits 79 through 82, and 84 through 88.

The Court: Any objections?

Mr. Callaghan: I have no objections to the documents which have been identified here as Government's exhibits 84 to 88.

The Court: Have you any?

Mr. Walsh: No, none to the photographs.

The Court: 84 to 88 are received in evidence.

(Which said photographs so offered and received in evidence, were marked Government's exhibits Nos. 84 to 88, both inclusive).

The Court: Have you objections to the other?

Mr. Callaghan: To 79, 80, 81, and 82, I object on the ground that they have not been properly qualified for admission as exhibits, the witness having testified the pictures were taken on May 28, 1951. The other grounds are a foundation not having been properly laid for the introduction of these photographs.



633 The Court: In what regard was the foundation not properly laid?

Mr. Callaghan: All he testified to the pictures were taken on May 28th, 1951. That is all there is in the record.

Mr. Downing: As to one of the photographs that is true, as to number 83. As to Government's exhibits 79, 80 and 81, the pictures taken, Marshall identified each of the photographs as photographs representing the place where in he obtained a load of this film on the 22nd of January, 1950.

The Court: July.

Mr. Downing: The 22nd of July, that is right, your Honor.

Mr. Walsh: That is on the 22nd?

Mr. Downing: That's right.

Mr. Walsh: I don't have anything to do with any of that.

Mr. Callaghan: To these seals, I have no objection to the Government's exhibits—

Mr. Downing: 68 and 69?

Mr. Callaghan: 68 and 69.

The Court: 79, 80, 81 and 82 are the same as the ones shown Marshall?

634 Mr. Downing: That is right.

The Court: Objections overruled. They may be received in evidence.

(Which said photographs so offered and received in evidence, were marked Government's exhibits Nos. 79, 80, 81, and 82.)

The Court: Any objections to the two seals?

Mr. Callaghan: No. 68 and 69.

The Court: 68 and 69 received in evidence.

(Which said objects, so offered and received in evidence, were marked Government's exhibits Nos. 68 and 69.)

BRUNO W. WILSON, called as a witness on behalf of the Government herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Downing:

Q. Will you state your name, please?

A. Bruno W. Wilson.

Q. What is your business or occupation, Mr. Wilson?

A. I am a Special Agent for the Federal Bureau of Investigation.

Q. How long have you been so employed?

A. Five years.

635 Q. At what office are you now stationed?

A. Chicago.

Q. Were you so stationed in the Chicago office in July of 1950?

A. I was.

Q. Directing your attention to July 27, 1950, at approximately 1:30 p.m., were you on duty on that day?

A. I was.

Q. Where were you at that time?

A. I was in the vicinity of 215 East Erie St., Chicago.

Q. Will you relate to the court and jury what, if anything took place at or about that time on July 27, 1950?

A. At about 1:48 p.m. in the afternoon, a Buick, 1950 two-tone Buick, with a Michigan license, E.M. 9645 came out of the alley adjacent to 215 East Erie. This automobile proceeded east on Erie Street to Fairbanks Street, turned south on Fairbanks Street to Ohio Street. On Ohio it turned west to Michigan and then proceeded south on Michigan to Jackson Blvd. On Jackson Blvd. it turned east again to Columbus Drive and then turned south on Columbus Drive, then turned south on Columbus Drive. Columbus Drive runs into the outer drive and this car proceeded down to the outer drive to Jeffry Blvd. It continued south on Jeffry Blvd. to 95th Street.

636 At that point, 95th Street is U. S. Routes 12 and 20.

This car stayed on U. S. Routes 12 and 20 until a point just beyond Michigan City, Indiana, at which time it turned off on Route 112 and proceeded on 112 at a pace of probably 15 or 20 miles an hour, and then stopped at a restaurant on the right hand side of the road.

Q. Did the occupants of the car get out at that time?

A. They did. They went into a restaurant.

Q. Approximately how long were they in the restaurant at that time?

A. They were in the restaurant about 15 minutes.

Q. Thereafter, did they then come out and re-enter the car?

A. They did.

Q. Then what happened?

A. The car then proceeded on route 112, at which point there are several hills, oh, 3 or 4. I followed this car for about 1 mile, when I got stuck behind a truck and lost the car.

Q. In the vicinity of what car were you at that time?

A. It was Buchanan, Michigan, where they stopped in the restaurant. It was Niles, Michigan where I lost 637 the car.

Q. Approximately what time of the day did you last see the car?

A. About 3:50 p.m. in the afternoon.

Q. That was in Michigan, between Buchanan and Niles, is that right?

A. Yes.

Q. How many people were in the car?

A. Two.

Q. Were there two from the time you first saw it until the time you last saw the car?

A. Yes.

Q. Have you since determined the identity of the occupants of the car?

A. Yes, James Marshall and Albert Swartz.

Q. Which of the two was driving the car?

A. James Marshall.

Mr. Downing: You may cross examine.

The Court: Do you have any questions?

Mr. Callaghan: No questions.

Mr. Walsh: One question.

The Court: Very well.

*Cross Examination*

By Mr. Walsh:

Q. Did you see anyone else in the car besides the 638 people?

A. Yes. There were boxes in the back of the car.

Q. Were you able to see anything? Was there anything written on them?

A. I didn't pay that much attention. I wasn't too close to them too often.

Q. Well, when it was parked at the restaurant, you had an opportunity?

A. No, sir, my car was parked across the street in a filling station.

Q. In a filling station?

A. Yes.

Mr. Walsh: That is all.

The Court: Any redirect?

Mr. Downing: No, that is all.

The Court: Step down.

(The witness excused.)

Mr. Downing: Mr. Transeth.

NORMAN S. TRANSETH, called as a witness on behalf of the Government herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Downing:

639 Q. Will you state your name, please?

A. Norman S. Transeth.

Q. What is your business or occupation, Mr. Transeth?

A. I am a special agent of the Federal Bureau of Investigation.

Q. How long have you been so employed?

A. Approximately 4 years.

Q. In what office are you employed?

A. Detroit, Michigan.

Q. Were you employed in the Detroit office in July of 1950?

A. Yes, sir.

Q. Directing your attention to July 27, 1950, in the course of your duties, did you have occasion to observe an automobile bearing a 1950 Michigan license?

Mr. Callaghan: I object to counsel leading the witness. Let him testify to what he saw. He has no right to give him the information about which he is to testify.

The Court: Overruled.

Mr. Walsh: It is both leading and suggestive.

The Court: Overruled. Go ahead with the question.

By Mr. Downing:

640 Q. Did you have occasion to discover an automobile bearing a 1950 Michigan license, E.M. 9645?

A. Yes, I did.

Q. Where were you when you first saw the car?

A. I was at the intersection of U. S. Highway 12 and Highway 17, located just west of Ann Arbor, Michigan.

Q. Approximately what time of the day was that?



A. That was shortly before 7 o'clock. I would say about 10 minutes to 7.

Q. Will you describe the car please?

A. It was a 1950 Buick Riviera, two-tone in color, dark blue top with a gray bottom.

Q. How many occupants were in the car at that time?

A. Two.

Q. Who was with you, if anyone, at that time?

A. Agent William Sullivan.

Q. Is he an Agent of the FBI?

A. Yes, sir.

Q. Now, did you thereafter have occasion to follow the car after you first saw it?

A. Yes, sir, I did.

Q. Then, will you describe what the car did after you first saw it, and what you did?

A. At about 10 minutes to 7 this car came down the road from a westerly direction and was traveling in an 641 easterly direction, that is, from the direction of Chicago and towards Detroit.

We followed the car through Ann Arbor, Michigan and on U. S. 12 towards Detroit. Just before we got to Plymouth, Michigan, this 1950 Buick Riviera stopped at a service station for gasoline and we drove on by. As we drove on by we saw both the driver and the other occupant of the car get out.

Q. Approximately how long was the car stopped there?

A. About 10 or 15 minutes. We drove down the road, turned around, and came back. As we came back we again saw these two men standing near the car.

Q. Have you had an opportunity to identify the occupants of the car?

A. Yes, sir, I have.

Q. Will you tell the court and jury who the occupants of the car were at that time and place?

A. James Marshall and Al Swartz.

Q. Then, after the individuals got back into the car, then what happened with respect to this Buick?

A. We surveilled the Buick right into Detroit, and followed them to the vicinity of Sturtevant and Broad Street, in Detroit.

Q. When you last saw the car were the same two men in the car?



642 A. Yes, sir, they were.

Q. To your knowledge at the time that you last saw them at the place you have indicated, did either James Marshall or Albert Swartz live in the vicinity where you last saw the car?

A. Yes, sir. Al Swartz lived in that vicinity.

Q. Approximately what time in the evening was it that you last saw the car?

A. It was about 8:15.

Q. And was that the last you saw the car on July 27, 1950?

A. Yes, sir, it was traveling east on Sturtevant.

Q. Directing your attention to Government's exhibit 90, marked for identification, I ask you to look at that and ask you whether you have seen it before?

A. Yes, sir, I did.

Q. By whom was that prepared?

A. This is my handwriting.

Q. And when was that prepared?

A. On July 28, 1950.

Q. That is the date that the document bears in the upper right hand corner of the document?

A. Yes, sir.

Q. Where were you at the time this was prepared?

643 A. I was at Marshall's jewelry store in Ferndale, Michigan.

Q. Is that the jewelry store of James Irwin Marshall, the one you saw in the Buick, you have previously testified to?

A. Yes.

Q. At that time will you tell what took place in connection with the preparation of Government's exhibit 90?

A. We went down into the basement of the jewelry store. By we, I mean myself, Agent William Sullivan and Agent Henry Schutz. And at that time there was some cartons or boxes of film there and I made an inventory at that time concerning the film. Agents Sullivan and Schutz sorted and piled the film up and read the numbers off of the cartons or boxes, at which time I wrote the description of the film down on this piece of paper.

Q. That is the paper that you have in front of you upon which you transcribed the information which was called off to you, is that right?

A. Yes.

Q. At that time did you see the cartons and check the numbers that were recorded on there?

A. Yes, sir, I did.

Q. With respect to the cartons that were present at 644 Marshall's store at that time, were they initialed, initialed in your presence by Agents of the Federal Bureau of Investigation?

A. Yes, sir, they were.

Q. Does your signature appear on the face of Government's exhibit 90 that you have in front of you?

A. Yes, it does.

Q. With respect to that signature, is that the signature first appearing on the first page of Government's exhibit 90?

A. Yes, sir.

Q. Has that document been in the custody of the Federal Bureau of Investigation since that date?

A. Yes, sir.

Mr. Downing: At this time, if your Honor please, I would like to offer in evidence, Government's exhibit 90, and they may cross examine.

The Court: I will hear them on it after cross examination. You may proceed.

*Cross Examination*

By Mr. Callaghan:

Q. Mr. Witness, what kind of a car were you driving on this day?

A. I was driving a 1950 Ford.

646 Q. Were you driving or was your partner driving? Sullivan, I believe you said his name was?

A. Yes, sir. I think I was driving part of the time and he was driving part of the time.

Q. While you were following this car, did you get out and change drivers?

A. No, sir.

Q. What part of the time were you driving?

A. I don't exactly recall that.

Q. Who was driving when the car first came in your view?

646 By Mr. Callaghan:

Q. Were you driving the car at the time this car first came into view?

A. I believe Agent Sullivan drove.

Q. Where did you change drivers?

A. I do not recall whether we changed or where we changed.

Q. Or whether you changed? Do you know whether you did change?

A. We changed drivers at Ann Arbor, Michigan. I think I drove the car to Ann Arbor, Michigan.

Q. You drove it from Detroit to Ann Arbor?

A. Yes.

Q. I am talking from the beginning of the time you first had this car under observation, who was driving at that time?

A. Agent Sullivan.

Q. Did he drive all the way into Detroit or did you change drivers again between Ann Arbor and Detroit?

A. I believe that Agent Sullivan drove all the way.

Q. How many miles is that?

A. Approximately 35.

Q. What time of night was it when you first saw this car?

A. About 10 minutes to 7 in the evening.

647 Q. Was it dark?

A. No, it was daylight, bright daylight.

Q. That is ten minutes to seven, Eastern Time, is that right, at Ann Arbor?

A. That is the time that Detroit is on, yes.

Q. That is Eastern Time?

A. I believe it is.

Q. Was the sun still shining?

A. Yes, sir, it was.

Q. What time was it when you got into Detroit?

A. Shortly after 8 o'clock.

Q. How long after?

A. I would say about, we reached the outskirts of Detroit perhaps a quarter to eight.

Q. What time was it before you got over around Sturtevant Avenue?

A. At 8:15 we last saw the car.

Q. How close did you get to this car at any time while

you were following it?

A. Well, I would say we were right behind it at times and opposite it at other times.

Q. Right behind it, that is only a short distance away from it?

A. Yes.

Q. And at other times there were cars that intervened between you and it as you traveled along?

A. That is right.

Q. Did you see Swartz get out of the car?

A. Yes, sir, I did.

Q. Did he get out in front of his house or in the back of his house?

A. I am talking about now when they got out at the gasoline station.

Q. Well, you and I misunderstand each other, Mr. Witness. I am talking about when you got to Sturtevant Avenue, now.

A. O. K.

Q. You saw the car stop somewhere on Sturtevant Avenue, did you?

A. No, I did not.

649 Q. Did you follow the car until it got to Swartz's house?

A. No, I did not.

Q. How far were you from Swartz's house when you ceased to follow the car?

A. Two blocks.

Q. So you didn't observe where it went when it got to his address on Sturtevant Avenue?

A. No, I did not.

Q. Was it still daylight at 8:15?

A. Yes, it was.

Mr. Callaghan: That is all.

*Cross Examination*

By Mr. Walsh:

Q. You knew that Swartz lived there at that address prior to this, prior to the time you followed the car there?

A. Yes, sir, I did.

Q. And had you followed that car towards Chicago earlier in the day?

A. No, sir, I did not.

Q. Did other Agents with whom you were in communication do so, do you know?



650 A. I don't know whether they did or not.

Q. Was your car equipped with radio?

A. Yes, sir, it was.

Q. And it was by means of radio communication that you picked him up at Ann Arbor, or wherever you picked him up? Where did you pick the car up?

A. At the intersection of U. S. Highway 12 and 17.

Q. And that is near what city?

A. Ann Arbor, Michigan.

Q. Will you describe that automobile in a little more detail than a 1950 Riviera Buick? What is a Riviera?

Mr. Downing: Objection, your Honor.

Mr. Walsh: We have heard a lot of discussion about it.

The Court: Describe the car.

By Mr. Walsh:

Q. It has four wheels; how many doors?

A. A Riviera is a hard topped Buick. By that, it has the appearance of a convertible. This particular car had white sidewall tires. A Riviera means that it is a two-door Buick.

Q. A two-door?

A. Yes, sir.

Q. Did you notice whether it was a Special, a Super, or a Roadmaster.

651 A. It was a Roadmaster.

Q. Now, with regard to the license number, what did you say it was?

A. EM-9645.

Q. And you say you saw it that day, did you?

A. Yes, sir.

Q. And which end of the car did you see it on?

A. From the rear.

Q. Is that the only plate that was on the car?

A. That is the only plate that I saw.

Q. As a matter of fact, Michigan issues only one plate to a car, isn't that right?

A. Yes, they do.

Q. And did you yourself ever check the registration of that license number?

A. No, I did not.

Q. Well, has anyone told you to whom it was registered—

Mr. Downing: Objection.

The Court: Sustained.

By Mr. Walsh:

Q. The film on this Government Exhibit 90 for identification, or the film that is listed here, the only film that you seized during that period?

652 A. That is the only film I saw, yes.

Q. And only three kinds, or do you recall?

Mr. Downing: Your Honor, the document speaks for itself.

By Mr. Walsh:

Q. Sir?

A. I would have to look at that inventory to tell.

Q. Was a copy of this given to Mr. Marshall?

A. I don't think a copy of that detailed inventory was ever given to Mr. Marshall.

Q. Was one prepared?

A. Yes, sir.

Q. And then after you prepared the original and copy, you took the film and both copies, and what did you do?

A. I misunderstood you. I don't think an original and duplicate of that particular document there was ever prepared.

Q. This was copied later on, you mean?

A. That was a document which was prepared at the time the film was taken.

Q. And not in duplicate and copies?

A. No, no copies or duplicates.

Q. What did you do with the film?

A. Took it from Marshall's jewelry store in Ferris-  
653 dale, Michigan, to the Detroit FBI office.

Q. Were these cartons all full?

A. I think there was one or two that was short one or two boxes of film.

Q. Now, after you followed this car to Sturtevant, you went to the vicinity of Sturtevant and what?

A. Sturtevant and Broad Street.

Q. That is in the Detroit city limits, or is it a suburb?

A. Yes, sir, Detroit city limits.

Q. You watched Swartz go to his home. Did you watch Swartz go to his home?

A. No, sir, I did not.

Q. Well, what is his address?

A. 4030 Sturtevant.

Q. How far is that away from the place that you drove to?

A. About two city blocks.

Q. Did you follow the car any farther after that night?

A. No, sir.

Q. That is the last you saw of it?

A. Yes, sir.

Q. And it is the next day, the 28th, that you received this merchandise from Mr. Marshall?

A. That's right.

Mr. Walsh: That is all.

The Court: Is there any redirect?

Mr. Downing: No redirect.

The Court: That is all. You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Downing: May I have a ruling on Government's Exhibit No. 90?

Mr. Walsh: I object to it, your Honor, on the ground it is self-serving and has the same effect about, as an FBI report. Obviously it is a document which an agent has made up and in which he describes an action which he performed.

Now he has testified about it, and it would be the same thing as having him give a written report of the surveillances they conducted.

Mr. Callaghan: I want to make my objection at the same time, and I will be still.

I make the same objection that Mr. Walsh makes except that it is simply a recapitulation of the testimony of the witness, or an attempt to corroborate the testimony of the witness by now putting in writing what he said orally from the witness stand.

The Court: That's right, except it lists the lot numbers and cartons.

Mr. Downing: That's right, and has the details that nobody could memorize. It is material to the lawsuit.

Mr. Walsh: This would be the equivalent of sending a note, recapitulating part of the evidence and emphasizing or reemphasizing it.

The Court: I think it is an inventory of the articles they took out of this, bearing the carton numbers and the lot numbers. As such it is admissible.

Mr. Walsh: If it please your Honor, other witnesses here have testified to transactions in connection with numbers and lots, and in some of the cases that they saw and of the things that he had records of and didn't even put the records in that they had with them—

The Court: If this weren't so involved, I wouldn't permit this in either, for the very reasons you point out, but since there were so many cartons and they bore different serial numbers, it would be impossible for a witness to memorize all of them—that is assuming that the witness has limited intelligence of the court—

Mr. Downing: And counsel.

The Court: The objection is overruled, and 90 will be received in evidence on behalf of the Government.

(Whereupon said document, so offered and received in evidence, was marked Government Exhibit 90.)

WILLIAM A. SULLIVAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Downing:

Q. Will you state your name, please?

A. William A. Sullivan.

Q. What is your business or occupation?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. How long have you been so employed?

A. Over three years.

657 Q. What office are you stationed in?

A. Detroit, Michigan.

Q. Were you in the Detroit office in July of 1950?

A. I was.

Q. Directing your attention to July 27, 1950, were you on duty on that date?

A. Yes, sir.

Q. In the course of your duties on that date did you have occasion to observe a 1950 Michigan license—

Mr. Callaghan: That is objected to as leading and suggestive.

The Court: The same ruling. Overruled.

By Mr. Downing:

Q. 1950, EM-9645.

A. I did.



Q. Where were you when you first saw that car?

A. At the intersection of U. S. 12 and Michigan 17.

Q. Will you describe the car as you saw it on that date?

A. It was a 1950 Buick, two-tone in color, a dark blue top and a light gray body.

Q. And who was with you at that time?

A. Special Agent Norman Transeth.

Q. At the time you first saw the car, how many  
658 people were on the inside?

A. Two.

Q. Approximately what time of the day was that?

A. That was at 6:50 p.m., approximately.

Q. Did you thereafter have occasion to follow the car?

A. Yes, sir.

Q. Describe what you saw and did on that day, at that time, from commencing with following the car on that date.

A. We observed this car proceeding—

Mr. Walsh: I object to what "we observed."

By The Witness:

A. (Continuing) I observed this car proceeding east on U. S. 12.

We followed the car through Ann Arbor, Michigan, in the direction of Detroit, remaining on U. S. 12.

Approximately eight miles out of Ann Arbor, Michigan—that is, east of Ann Arbor—the car pulled into a service station. We passed the car while it was parked at the service station getting gasoline, and both occupants were out of the car. We drove approximately a quarter of a mile east on U. S. 12, turned around and drove back by 659 the filling station again.

The occupants were still standing outside of the car talking to each other.

We drove approximately a quarter of a mile west, turned around and parked, waiting for the car to pull out.

By Mr. Downing:

Q. How long did you wait before the car pulled out?

A. Oh, approximately ten to fifteen minutes.

Q. Now, have you had an opportunity to identify the occupants of the car?

A. Yes, sir.

Q. And who were the occupants of the car at that time and place?

A. Mr. James Marshall and Mr. Albert Swartz.

Q. And thereafter when the car pulled out of that place, what took place?

A. We followed that car on U. S. 12 into Detroit, Michigan. We followed it to the vicinity of Broad Street and Sturtevant.

Q. And what time was that, approximately?

A. That was approximately 8:15 p.m.

Q. When you last saw the car, was that at the intersection of Broad and Sturtevant Street in Detroit, Michigan?

A. Yes, sir, the car was turning east on Sturtevant Street.

Q. Heading east on Sturtevant, is that right?

A. That's right, sir.

Q. And were the same two men in the car at that time when you last saw the car?

A. Yes, sir.

Q. To your knowledge, at that time did either James Marshall or Albert Swartz live in the vicinity of where you last saw the car at Broad and Sturtevant Street in Detroit, Michigan?

A. Mr. Swartz lived at 4030 Sturtevant Street.

Q. Directing your attention to Government's Exhibit 90 in evidence, I ask you to look at that and I ask you if you have seen that before.

A. Yes, sir.

Q. I ask you if your signature appears as the second signature on that document?

A. Yes, sir.

Q. And I ask you if your signature was affixed thereto on July 28, 1950, the date that the document bears.

A. Yes, sir.

Mr. Downing: You may cross examine.

661

*Cross Examination*

By Mr. Callaghan:

Q. When did you last discuss your testimony with Mr. Transeth?

A. When we made our notes on this surveillance.

Q. Was that the last time you talked to Transeth about your testimony?

A. Yes, sir, except for refreshing my memory with my notes.

Q. When did you do that?

A. Today, sir.

Q. Did you and Transeth look at the same notes to refresh your recollections?

A. No, sir.

Q. Did you look at your notes or Transeth's notes?

A. I looked at my notes.

Q. Did you discuss your testimony with Mr. Transeth on the way over from Detroit to testify?

A. No, sir.

Q. Did you travel over from Detroit to Chicago and come here as a witness?

A. Yes, sir.

Q. And you didn't discuss your evidence during all of that time?

662 A. At that time we didn't know exactly what we were testifying to.

Q. You didn't know what you were expected to testify to when you came to Chicago?

A. We knew that we were going to testify to the surveillance, sir, and also possibly to—

Q. You say "we know"; did you exchange information about that?

A. Yes, sir.

Q. And how did you come from Detroit to Chicago when you were going to testify—by car or by train?

Mr. Downing: If your Honor please, I object to that. It is immaterial, how he came to Chicago.

By The Witness:

A. By car.

The Court: Sustained. Wait a minute.

By Mr. Callaghan:

Q. Are you living together here in Chicago?

Mr. Downing: I object to that.

The Court: Sustained.

By Mr. Callaghan:

Q. Did you discuss your testimony with Mr. Transeth since he left the witness stand?

663 A. No, sir.

Q. Did he discuss what he testified to with you when he left the witness stand?

A. No, sir.

Q. Did you speak to him when he left this court room?

A. No, sir.

Q. Who was driving this car when you first observed the Buick? Who was driving your car?

A. Mr. Transeth drove from Detroit to Ann Arbor, Michigan.

Mr. Callaghan: Wait a minute, Mr. Witness. I move that be stricken. I asked who was driving the Buick at the time you first observed it.

By Mr. Callaghan:

Q. Who was driving your car when you first observed the Buick at Route 17 and 12 outside of Ann Arbor?

A. Neither of us was in the car that we were driving.

Q. Well, who got into the car then and took over the driver's seat when you started to follow this car?

A. I did, sir.

Q. Did you change drivers anywhere between Ann Arbor and Detroit?

A. No, sir.

Mr. Callaghan: That is all.

664 The Court: Do you have any questions?

Mr. Walsh: Yes.

*Cross Examination*

By Mr. Walsh:

Q. Will you describe the Buick?

A. It was a 1950 Buick, two-tone in color, a dark blue top, a light gray bottom.

Q. How many doors?

A. Two.

Q. Do you know what model it was?

A. A 1950 Buick Riviera, I believe it is called.

Q. Would you know which size Buick?

A. No, sir.

Q. You saw two men in it when it approached you?

A. Yes, sir.

Q. Who was driving it?

A. Mr. Marshall.

Q. Have you had occasion to check the license number that you have told us about?

A. No, sir, I have not.

Q. To find out to whom it was registered?

A. I have not.

Q. Did you follow that car previously on that day?

665 A. No, sir, not until we saw it at the intersection of M-17 and U. S. 12.

Q. That is the first time you saw that car that day?

A. Yes, sir.

A. Yes, sir.



Q. Now, is that all of the film that is listed on Exhibit 90? Would you look at it? Is that all of the film that you seized on that day, on the day that the exhibit bears which is July 28, 1950?

A. Yes, sir; yes, sir.

Q. Now, were all of these cartons full or empty, or partially full?

A. They were partially filled, two of the cartons.

Q. Two of the cartons of this inventory?

A. Yes, sir.

Q. Which two?

A. From the filed cartons marked 6 millimeter commercial Kodachrome film. In one box there were two rolls missing, and from another box there was one roll missing.

Q. Did you look at some of the others, at any of the rolls at that time?

A. One of the boxes was open, or two of the boxes were open, I believe.

Q. Were they similar to this Government's Exhibit 66?

A. Yes, sir, commercial Kodachrome, yes, sir.

Q. Was that the first commercial Kodachrome that you had seized in that case?

A. Yes, sir.

Q. Is it the only commercial Kodachrome that you picked up in the case?

A. Yes, sir.

Q. Now, was this Government's Exhibit 66 in those cartons—

Mr. Downing: Objection, your Honor. That was not even gone into on direct testimony.

The Court: Well, if he knows he may answer.

By The Witness:

A. If I had seized this, sir, I think my initials would have appeared on it.

By Mr. Walsh:

Q. Well, is your answer yes, no, or "I don't know"?

A. Will you restate your question, please?

Q. Is your answer yes, no, "I don't know"?

A. Will you restate your question, please?

Q. Excuse me.

Was this Exhibit 66 in any of the cartons which you seized from Mr. Marshall's store on July 28, 1950?

667. A. No, sir.

Mr. Walsh: That is all.

The Court: Is there any redirect?

Mr. Downing: No, your Honor.

The Court: That is all. You may step down.  
(Witness excused.)

Mr. Downing: The Government rests.

The Court: The Government rests.

Mr. Callaghan: Now, if your Honor please, before the Government rests, and before officially the resting is of record, the defendants request the court to permit them to inspect the minutes of the grand jury in this case, or if your Honor sees fit not to grant that request, that your Honor himself inspect the grand jury minutes in this case in a matter of considerable consequence that I don't think ought to be discussed publicly.

The Court: Do you have other motions?

Mr. Callaghan: We have other motions, too.

The Court: Well, we will excuse the jury at this time until ten o'clock tomorrow morning.

I will hear you on your motion, but do you want to be heard on this first?

Mr. Callaghan: Yes, it will just take a few brief 668 moments.

(The following proceedings were had out of the presence and hearing of the jury:)

The Court: Did you say you wanted to be heard in chambers?

Mr. Callaghan: It doesn't make any difference.

The Court: Oh, you meant out of the hearing of the jury.

Mr. Callaghan: Yes, your Honor.

The first count of the indictment, may it please your Honor, which is incorporated by reference into the second count of the indictment, describes the merchandise which it is charged these defendants had in their possession on July 20, 1950, as

"11 cartons of 116 Kodak film;

7 cartons of 8 millimeter Kodachrome roll film;

1 carton of 8 millimeter Kodachrome magazine film,  
and

5 cartons of 16 millimeter Kodachrome movie film."

Incorporated in that description of the articles and things incorporated by reference in count 2 of the indictment, which charges that on July 20, 1950, these de-

669 defendants did transport and cause to be transported in interstate commerce the merchandise heretofore described.

Now, the only witness who has testified in this case, or who testified before the grand jury in this proceeding concerning the transportation of any merchandise in interstate commerce was the witness Marshall, who testified that on July 20 he transported in interstate commerce 11 cases of 8 millimeter magazine Kodachrome, the indictment saying that one case was thereby transported; that he transported in interstate commerce 10 cases of roll Kodachrome, the indictment describing that as 7 cases of rolled Kodachrome; and that he transported in interstate commerce 13 cases of 116 film, and the indictment describing that as 11 cases of 116 film.

What undoubtedly has happened here, and the reason we are challenging it now and asking your Honor for an inspection of the grand jury minutes, is that the prosecutor, in this case, has taken it upon himself to insert his own description of the things taken in interstate commerce, rather than that given by the witness before the grand jury, all of which has tended to confuse the defendants in their defense, and to make it impossible to defend

670 against the charges, there now having been produced by the testimony of the witness the charge in the indictment a fatal variance in this case, and I think your Honor, in the interest of justice, ought to require the inspection of the grand jury minutes so that we may know what the evidence was before the grand jury, and that the pleader is not here simply describing his version of what occurred before the grand jury in the indictment.

The Court: The motion is denied.

Are there other motions?

Mr. Callaghan: I have a similar motion or motions made as to counts 3 and 4 of the indictment, described as 30 cartons of Kodachrome roll film; that is incorporated in the fourth count by reference to the third count.

The witness in this instance testified here that a transport in interstate commerce, roughly said 25 cartons of film and that five of those cases were, I believe, the professional. That is approximately 25 cases. He made two answers to that. He said that five of those cases were 16 millimeter professional film, professional color film and

*Argument for Judgment of Acquittal on Behalf of Defendant MacLeod* 325

then again he said that five of those cases were the 116 color film.

671 So he described those five cases differently on two occasions in his direct and cross examination, and then he said the rest—without saying how much—was the roll Cine Kodak 8 millimeter film.

Now, the indictment charges in both counts 3 and 4 that both 30 cartons of 8 millimeter Kodachrome roll film was the merchandise transported in interstate commerce. It makes a vast difference in this case how the merchandise is described, because the government has to prove, in order to sustain conviction under Counts 2 and 4 of this indictment, a value in excess of \$5,000.

Now, if the articles and things are misdescribed in an indictment, so that a defendant is thereafter taken by surprise, as something other and different than those taken in the articles described in the interstate commerce, then you cannot try these kind of cases fairly. You may have a value of \$10,000 or \$2,000 involved by inspection of the indictment. When you come to try the lawsuit, it is something entirely different that should be before the court than what is described in the indictment.

The Court: The motion is likewise denied.

Mr. Callaghan: The defendant Gordon now, at the 672 close of the evidence for the Government, moves the

Court for judgment of acquittal as to each separate count in the indictment, and he makes the motion separately as to each count in the indictment, and I would like to be heard briefly on Counts 2 and 4 of this indictment.

678 The Court: The motion as to each and all of the counts is denied.

679 ARGUMENT FOR JUDGMENT OF ACQUITTAL  
ON BEHALF OF DEFENDANT MAC LEOD.

By Mr. Walsh:

I would like to point this out. There is no identification or connection between MacLeod and Counts 1 and 2 in the record that I can see.

The Court: Your motion is for a judgment of acquittal, also, is it?

Mr. Walsh: Yes, your Honor.

The Court: You state your motion.



Mr. Walsh: That motion on the production of the Grand Jury minutes of the defendant MacLeod.

The Court: Joins?

Mr. Walsh: Debates—

The Court: Really is the same as to MacLeod?

Mr. Walsh: Yes.

The defendant MacLeod moves for acquittal on each count of the indictment counts 1 to 4.

The Court: In the record?

Mr. Walsh: Yes.

689 The Court: The motion is likewise denied. The defendants will be ready to proceed with their evidence tomorrow.

The defendant Gordon, since he is listed first in the indictment, will proceed with his evidence and then the 690 evidence of the defendant MacLeod.

Counsel for both sides are directed to prepare and submit in duplicate for the afternoon session tomorrow their instructions, if they care to have the Court consider them.

We will recess at this time until 10 o'clock tomorrow morning.

(Whereupon, at 4:45 p.m., an adjournment was taken until Tuesday, June 5, 1951, at 10 o'clock a.m.)

Before Judge Campbell and a Jury,  
Tuesday, June 5, 1951,  
10:00 o'clock, a.m.

Court met pursuant to adjournment.

Present:

Honorable Otto Kerner, Jr.,

U. S. District Attorney,

By: Robert J. Downing,

Assistant U. S. Attorney,

On behalf of Government;

Mr. George F. Callaghan,

On behalf of defendant Gordon;

Mr. Maurice J. Walsh,

On behalf of defendant MacLeod.

693 Thereupon The Defendants, To Maintain The Issues  
On Their Parts, Introduced The Following Evidence,  
To-Wit:

ARTHUR S. FLANK, called as a witness on behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Walsh:

Q. Will you state your name?

A. Arthur S. Flank.

Q. Where do you live, Mr. Flank?

A. 7011 North Greenview, Chicago.

Q. What is your business or occupation?

A. Operate a motion picture laboratory and film sales organization.

Q. Where is that organization located?

A. 103 South Wells, Chicago.

Q. Under what name is that business operated?

A. Superior Bulk Film Company.

694 Q. Is it a corporation?

A. No, it is not.

Q. That is a trade name?

A. Yes.

Q. Now, how long have you been engaged in that business?

A. Twelve years.

Q. And what function does that business perform?

A. We process 16 millimeter motion picture film and 8 millimeter motion picture film, black and white.

Q. How long have you been engaged in that?

A. Twelve years.

Q. Now, have you taken any special training or schooling in the art of processing film?

A. Yes. I have had special training.

Q. What is that special training?

A. I was in the army, photographic, signal corps, in the laboratory for 3½ years.

Q. And have you personally processed moving picture film?

A. Yes, I have.

Q. Both 8 millimeter and 16 millimeter?

A. Yes.

Q. Are you familiar with the cost of such processing?

695 A. Yes, I am.

Q. Now, what does it cost, what is the cost of processing 8 millimeter moving picture film in 25 ft. rolls?

Mr. Downing: Objection, your Honor.

The Court: The cost of processing, we are interested in the value of the film.

Mr. Downing: There is nothing in issue in this trial of the processing.

Mr. Walsh: There is an element of cost in this film.

The Court: Where is this indictment? You have the file out there?

Mr. Downing: Here it is.

The Court: You are asking the cost of processing what type of film?

Mr. Walsh: 8 millimeter moving picture film.

Mr. Downing: We have no 8 millimeter.

The Court: Mr. Vayo testified that type of film is processed as a cost of the film.

Mr. Downing: There is no 8 millimeter motion picture film in the indictment.

The Court: Magazine film.

696 Mr. Downing: That is not what he is talking about.

Mr. Walsh: Several times 8 millimeter roll film was given.

The Court: No, they testified about processing magazine film. If that is what you are asking about you can bring it out. The other is not an item here.

Mr. Walsh: There are three types used and as I understand it as processed by the Eastman Kodak Company free of charge—not free of charge.

The Court: It is part of the cost. There is one, a magazine film and the professional film.

Mr. Downing: That is right, your Honor.

Mr. Walsh: ~~Three~~

The Court: That was the testimony of the Government. The roll film and the kodak film is not processed. That is part of the cost.

Mr. Walsh: Well, the roll film is a movie picture film.

Mr. Downing: I think the roll film.

Mr. Walsh: Vayo testified that three forms were processed. The only one that is not is 116 Kodak film.

697 The Court: Is that your recollection?

Mr. Downing: My recollection is he did say 116 was the only film that was not processed. I don't recall

that he said the 25 was. So the 116 was not.

Mr. Walsh: May we have defendant's exhibit 2?

The Court: Just a moment. I have got my notes here. They will settle it. 116 millimeter kodak film is not processed as part of the cost. The other three are. That was Mr. Vayo's testimony. Then the cost of processing is an element.

Mr. Downing: No, my point is this: The question, as I understood the question, referred to film which is not even referred to in this indictment.

The Court: You are asking about 8 millimeter?

Mr. Downing: Motion picture film. There is nothing in this indictment about motion picture 8 millimeter film.

The Court: If you ask him about any that are listed there, 8 millimeter—

Mr. Downing: Roll film.

698 The Court: Kodachrome, 8 millimeter magazine,

I will permit him to answer on the same type of film. We are concerned with 4 types. The last three of them enumerated in Count 1, as I understood Mr. Vayo's testimony, is processed by the Kodak Company as part of the cost price. The first one listed in Count 1 is not. If you ask him about any of those and within those limits you may do so. Anything else we are not interested in.

699 By Mr. Walsh:

Q. Now, Mr. Flank, do you process color film?

A. No, sir, we do not.

Q. But you do process black and white film?

A. Yes.

Q. Are you familiar with the cost of processing color film in relation to the cost of developing black and white film?

A. Only that it must be more expensive.

Mr. Downing: I object, your Honor. I move it be stricken.

The Court: That may be stricken.

By Mr. Walsh:

Q. Do you know, as a matter of fact, whether it is more expensive?

Mr. Downing: I object to that.

By The Witness:

A. No, I don't.



The Court: He answered that he doesn't, so what is the difference?

Mr. Downing: Yes, pardon me.

By Mr. Walsh:

Q. Do you or your company process 8 millimeter film Kodachrome roll film?

700 A. No.

Q. Do you process 8 millimeter roll film?

A. Yes, we do.

Q. And what is the cost of processing a roll of 8 millimeter roll film?

Mr. Downing: Just a minute, your Honor.

The Court: That is not charged here. Sustained.

By Mr. Walsh:

Q. Are you a distributor of Eastman Kodak film?

A. No, we are not.

Q. Do you buy and sell it?

A. No, we buy it and use it.

Q. You buy it and use it?

A. Yes, sir.

Q. And what types of their film do you buy and use?

A. Positive film for printing, panchromatic roll film for camera use.

Q. Do you buy and use 16 millimeter Kodachrome movie film?

A. No, we do not.

Q. Known as commercial film?

A. Yes, we do.

Q. Such as the type contained in Government's Exhibit 66 (indicating)?

A. Yes.

Q. Now I direct your attention to July 19, 1950, and ask you what price—Well, from whom do you buy this film?

A. From the Brulatour Company.

Q. J. E. Brulatour Company?

A. Yes, Incorporated.

Q. In Chicago?

A. Yes.

Q. And what price did you pay in July, 1950, for the type of film contained in Government's Exhibit 66?

A. May I refer to my price list?

The Court: Certainly.

By The Witness:

A. (Continuing) \$7.95 a hundred feet.

By Mr. Walsh:

Q. Did that include processing?

A. Yes, it does.

Q. That is, you don't process that film yourself?

A. No.

Q. You send it to the Eastman Kodak Company and they process it for you?

A. Yes, sir.

Q. And that included all taxes?

702 A. According to the price list, yes.

Q. Is that the price that you paid in July of 1950, or has there been a raise since July of 1950?

A. There has been no raise since July, 1950, to my knowledge.

Q. Do you know the cost of processing this type of film?

A. No, I don't.

Q. Do you purchase 8 millimeter Kodachrome roll film?

A. Yes.

Q. And do you distribute that and sell it?

A. No.

Q. You do not?

A. No.

Q. Do you purchase it as a user?

A. Yes.

Q. What is the price you pay for it?

A. Will you repeat the type of film, please?

Q. 8 millimeter Kodachrome roll.

A. \$3.75 is the retail price.

Q. And what is the price that you pay for it?

A. Our discount is 20 percent.

Q. 20 percent?

A. Yes.

703 Q. And you are not a dealer?

A. No, I am not.

Q. Now, how about 8 millimeter Kodachrome magazine film? Do you purchase that for use?

A. Yes.

Q. And what is the price for that?

A. \$6.75.

Q. And what is your discount on that?

A. 20 percent.

Q. That is an 8 millimeter magazine?

- A. No, that is 16 millimeter magazine.  
 Q. I am talking about 8 millimeter.  
 A. 8 millimeter magazine, \$4.50.  
 Q. \$4.50?  
 A. Yes.  
 Q. What is your discount on that?  
 A. 20 percent.  
 Q. What is your discount on 16 millimeter Kodachrome movie film?  
 A. The discount is the same, 20 percent. There is no discount. The prices given us are the net prices by the distributor.

Mr. Downing: By "this," are you referring to Exhibit 66?

704 The Witness: Yes.

By Mr. Walsh:

- Q. 16 millimeter Kodachrome movie film?  
 A. Yes, sir.  
 Q. On that you get no discount?  
 A. Those are sold net prices to commercial users only.  
 Q. And how much do you pay for a roll of this?  
 A. \$7.95.

Mr. Downing: By "this," he is referring to Government's Exhibit 66.

The Court: The record may so show.

By Mr. Walsh:

Q. Now, have you ever processed film and found the emulsion to be faulty?

Mr. Downing: Objection, your Honor. That is immaterial to the issues in this lawsuit.

The Court: Sustained.

By Mr. Walsh: There is testimony that the emulsion on one of these types of film was bad.

The Court: There is no testimony as to the shipment involved here. That was the shipment to New Jersey.

Objection sustained.

05 By Mr. Walsh:

Q. Well, let me ask you this, then: If film is processed, manufactured through an emulsion and it is determined after it is completed by examination of samples of film or some of them, that the emulsion was faulty, can you state whether or not the faults of that emulsion would be apparent in all of the film from that emulsion?

Mr. Downing: Objection, your Honor, to the question.

The Court: Sustained.

By Mr. Walsh:

Q. Do you have an opinion on that subject?

Mr. Downing: Objection, your Honor. The question—or the objection has been sustained.

The Court: Sustained.

By Mr. Walsh:

Q. Well, suppose, Mr. Witness—

Mr. Downing: If it please your Honor, I object to any question—I appreciate the fact there is no question pending, but I object to any question pertaining to the emulsion, and he is not an employee of Eastman Kodak, and he has nothing to do with the Eastman Kodak.

706 The Court: That was the basis of my ruling on your other question.

By Mr. Walsh: I would like to make my record.

The Court: Certainly.

By Mr. Walsh:

Q. Assume that the Eastman Kodak Company manufactured some film on special order in an emulsion numbered 5268-176, and that a limited number of rolls were prepared from that emulsion, that one part of those rolls was sent to New Jersey to the J. E. Brulatour Company, and another section of the film from that emulsion was sent to Chicago; assume that it was determined that the emulsion was faulty and the film from New Jersey was recalled entirely.

Would you have an opinion, or do you have an opinion concerning the effectiveness or usefulness in regard to the emulsion qualities of the film that was sent to Chicago?

A. Yes.

Mr. Downing: Objection, your Honor. I think this man has not been qualified on the basis to answer a question of that type.

The Court: Regardless of that, it is immaterial. Sustained.

707 By Mr. Walsh:

Q. Have you ever attempted to develop film which was produced with a faulty emulsion?

Mr. Downing: Objection, your Honor.

The Court: Sustained.



By Mr. Walsh:

Q. Now, are you familiar with the discounts given to dealers on the film about which I asked you?

A. Yes.

Mr. Downing: Objection, your Honor, because this man, first of all, is not qualified as an employee of the Eastman or Brulattour Company, and is qualified solely as a person who operates a particular company, and he is acquainted with what he receives, and that is all the qualification is based on.

The Court: No, on prices of film that he deals in, I think he is qualified here. You are going to ask him about film such as described in the indictment that he says he bought?

Mr. Walsh: I have limited the question to the film such as we have been talking about.

The Court: Objection overruled.

By Mr. Walsh:

708 Q. With regard to 8 millimeter Kodachrome film, do you know the discount allowed to Eastman distributors on that type?

Mr. Downing: Objection. That is all covered on those three types of the film.

The Court: He stated he pays \$4.50, less 20 percent.

Mr. Walsh: But he is not a dealer.

The Court: How does he qualify? I thought you wanted to establish price.

By Mr. Walsh:

Q. You have been in the business for twelve years?

A. Yes.

Q. Are you familiar with the prices in the trade and industry?

A. Yes, I am.

Mr. Downing: I still say it is repetitious.

The Court: I will let him answer.

By Mr. Walsh:

Q. What is the discount given to dealers?

A. 33 1-3 percent.

Q. And on 8 millimeter Kodachrome Magazine film, what is the discount given to dealers?

A. 33 1-3 percent.

709 Q. Do you know what the discount is on 116 Kodak film?

A. I do not.

Mr. Walsh: That is all.

*Cross Examination*

By Mr. Downing:

Q. You are not employed by Eastman Kodak?

A. No, I am not.

Q. Have you ever been employed by Eastman Kodak?

A. I have not.

Mr. Downing: That is all.

710 MARYLIN GORDON, called as a witness on behalf of the defendant Gordon, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Callaghan:

Q. What is your name, please?

A. Marylin Gordon.

The Court: M-a-r-i-l-i-n?

The Witness: M-a-r-y-l-i-n.

By Mr. Callaghan:

Q. You are the wife of the defendant Kenneth Gordon?

A. Yes.

Q. Were you the wife of the defendant Gordon in July of 1950?

A. Yes.

Q. How long have you been married?

A. It will be two years in June.

711 Q. Do you have a family?

A. Yes, I have a daughter nine months old.

Q. Mrs. Gordon, I call your attention to Saturday, July 22, 1950, and ask you if you know where the defendant Gordon was on that day at the hour of 4:30 p.m.

A. Yes, I do.

Q. Where was he?

A. He was with me on his boat.

Q. Do you know where he was earlier that day?

A. Yes, we both got up together about eleven o'clock that morning, and we went out on his boat for a picnic lunch, and we were there all day.

Q. Do you know where you were from four-thirty until later that evening, or into the evening?

A. Yes.

Q. Where were you?

A. We left the boat about 4:25 or 4:30 and went to my mother's house for dinner, and spent the evening there.

Q. Was there occasion on July 22, 1950, for you to go

to your mother's house for dinner?

A. Yes, we celebrated my birthday.

Q. Was your stepfather present at that dinner?

A. Yes.

712 Q. Where was that dinner had, at your mother's home?

A. At my mother's home.

Q. Do you know what time you left that night, July 22?

A. We all left about eight-thirty or nine, and went for a ride.

Mr. Callaghan: You may cross examine.

Mr. Downing: No cross examination.

The Court: That is all, you may step down.

(Witness excused.)

713 STANLEY GOLDMAN, called as a witness on behalf of the defendant Gordon, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Callaghan:

Q. What is your name, please?

A. Stanley Goldman.

The Court: What is the first name?

The Witness: Stanley.

The Court: Spell the last name, please.

The Witness: G-o-l-d-m-a-n.

The Court: Thank you.

By Mr. Callaghan:

Q. Where do you live, Mr. Goldman?

A. 426 Belmont Avenue.

Q. What is your business or profession?

A. I am in the commercial banking business.

Q. Do you know the defendant, Kenneth Gordon?

A. I do.

Q. How long have you known him?

A. About three years.

Q. Are you related to him by marriage or otherwise?

A. I am.

714 Q. What is your relationship?

A. Father-in-law.

Q. I call your attention, Mr. Goldman, to July 22, 1950, Saturday the 22d, 1950, and ask you if you know where the

defendant Gordon was on that day, at or about the hour of 4:30 p.m.

A. Yes.

Q. Where was he?

A. Well, at 4:30?

Q. Yes, sir.

A. He was on his way to our home.

Q. Did you see the defendant Gordon at or about 4:30 p.m. on July 22, 1950?

A. At that time or a few minutes later.

Q. How much later?

A. Oh, maybe ten or fifteen minutes.

Q. Where did you see him?

A. At our home.

Q. ~~What was~~ the occasion for him being at your home?

A. A dinner party for our daughter, his wife, a birthday.

Q. What was the occasion of the dinner party?

A. A birthday dinner.

715

*Cross Examination*

By Mr. Downing:

Q. When did you first see the defendant Gordon on that day?

A. About the time I mentioned, between four-thirty and five. I don't know exactly, because the dinner was supposed to be exactly at five. We usually have dinner at five o'clock on the week ends.

Q. And that was sometime between four-thirty and five p.m. on July 22d?

A. Yes.

Q. That was the first time you saw him that day?

A. Yes.

Mr. Downing: That is all.

Mr. Callaghan: That is all, Mr. Goldman.

The Court: Step down

(Witness excused.)

Mr. Callaghan: I have another witness, and I expect that he is not here.

Mr. Gordon.



716 KENNETH C. GORDON, one of the defendants herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Callaghan:

Q. What is your name, please?

A. Kenneth Gordon.

Q. How old are you, Mr. Gordon?

A. Twenty-nine years old.

Q. Where do you live?

A. 515 Roscoe.

Q. Are you married?

A. Yes, sir.

Q. Do you have a family?

A. Yes, sir, I have a daughter.

Q. Of what does that family consist?

A. One daughter, nine months old.

Q. You are a defendant in this proceeding, Mr. Gordon, are you?

A. Yes, sir.

Q. Do you know a man named James Marshall?

A. I have seen him now, in the court room.

Q. Do you know a man named Albert Swartz?

A. Yes, sir.

717 Q. Did you hear Mr. Marshall testify in this proceeding?

A. Yes, sir, I did.

Q. By the way, what is your present occupation?

A. Well, I am on orders to go into the Army, so I had to sell my jewelry store.

Q. When did you sell the jewelry store?

A. I think we completed the deal around February, the end of February of this year.

Q. Where was that jewelry store located?

A. 21 East Adams Street.

Q. Did you conduct a pawnshop there?

A. Never.

Q. Was that a loan business?

A. No, sir, it was a jewelry store.

Q. What was the name of the jewelry store?

A. Liberal Jewelers.

Q. And that was its name since you took over the business in what year?

A. I took over the business in 1946, and it has been "Liberal Jewelers" ever since.

Q. Mr. Gordon, when did you first see the witness, James Marshall?

A. The first time I saw Mr. Marshall was when 718 he accompanied Mr. Swartz into my store, last year.

Q. Do you remember the day that you first saw him, or the date?

A. Not exactly; sometime in July.

Q. Can you fix it any more definitely than just sometime in July?

A. It was about the middle of the month. I couldn't state any closer.

Q. Well, will you tell the court and jury now what occurred on the occasion of your first seeing Mr. Marshall sometime in July of 1950?

A. Mr. Swartz and Mr. Marshall came into my store, and I was in the back room sorting diamonds, and my salesman announced that Mr. Swartz was here to see me, and I told them both to come back there. I didn't want to leave the tray of diamonds loose.

Mr. Swartz introduced me to this man as Jim, "Jim, meet Ken."

Upon sitting down, he pulled out a ladies' compact.

Q. Who is "he"?

A. Swartz. And he asked me if I would be interested in buying 150 of this type of compact, and it was a cheap compact, and I had no use for it in my store, and I 719 told him no.

He asked me if I had anything for him to buy so that he could make any money on it, as he came into my store and quite often bought jewelry from me.

Q. By the way, how long had you known Swartz?

A. I had known Swartz since I opened the store, about five years.

Q. Had you seen him rather frequently during the five years?

A. He made trips to Chicago, three or four or five times a year and always visited me.

Q. Did you see him on the—

A. I would say five times a year.

Q. Did you and he do business together up to the time of this occurrence?

A. Yes, sir, we bought and sold diamonds and jewelry to each other.

Q. Now, you were telling us at the time that I interrupted you, at that time he offered you some compact for sale.

Tell us what else was said on the occasion of this meeting.

A. I told Mr. Swartz I had no use for the compacts.

He asked me if I had anything he could use, and I told him I was busy right now picking out diamonds for a wedding ring, and if he would come back later I would look around, at which time Mr. Swartz said, would I be interested in buying any film, and I told Mr. Swartz we did not handle film in the store, but if he had 16 millimeter magazine film I would buy some for myself.

Q. By the way, are you an amateur photographer?

A. Yes, I am.

Q. Is it a hobby?

A. A hobby.

Q. Tell who said what.

A. I asked Mr. Swartz if he had 16 millimeter magazine, and Mr. Swartz said he didn't have magazine, but had commercial film. I didn't know what commercial film was, so I was not interested.

He departed and said they would see me later, and meanwhile I was to look around and see if I had anything for him to buy.

Q. All right. Did you see him again later that day, or subsequently that day?

A. He came back later that afternoon. He and Marshall came into the store and asked me if I had anything, and I said I had not, that I had looked around, and there was nothing of interest to Mr. Swartz except one big diamond wrist watch.

Mr. Swartz asked me about the diamond wrist watch, and told me it was sort of high priced for him, that he was tied up in a film deal, and would have the film sold by next week, and maybe he would be interested by then, if I wished to hold the watch until then.

Then he asked me, "Incidentally, do you know of a garage where I can put the film? I have a truckload of film."

I told him to look into the newspaper. He looked into the Tribune and could find no garage.

Q. Was Marshall in the store?

A. Marshall was in the back of the store with Swartz.

Q. By the way, did you at any time that you talked to Swartz in any part of this occasion, leave Marshall sitting out in the outer office?

A. No, sir, Mr. Marshall was with us.

Q. From the time he came into the store?

A. From the time he came into the store.

Q. All right, sir. Go ahead.

A. When Swartz looked through the newspaper—I tried to help him find where the garages might be listed—and there were none listed, and he said he had to move it because he was pretty sure one of the persons he had seen while he left me would take the film in about a week.

I then recalled that I had a garage behind my rooming house at 215 East Erie, and I mentioned that to him, and I asked him, "What size truck?"

And he described it as an old newspaper truck.

I thereupon called Mr. MacLeod at 215 East Erie and asked him the condition of the garage in the rear, and described the truck, and Mr. MacLeod told me he thought it would fit.

I told him, I told Mr. Swartz that we did have a space, and I told MacLeod that I was sending two people to put a truck into the garage.

Mr. MacLeod told me it would have to be made some other time because he had to go away.

I told Mr. MacLeod that he didn't have to be there, to leave the garage open, and I would send the fellows over, which I did. I wrote it down on a piece of paper, the address, 215 East Erie, and they took the truck over there, evidently.

Q. To whom did you give the piece of paper on which you wrote "215 East Erie Street"?

A. This piece of paper I gave to Mr. Swartz.

Q. Now, did they then leave the store?

722 A. They then left the store, yes, sir.

Q. Did you see Mr. Swartz—

By the way, did you exact any cost or charge for the use of that garage?

A. Mr. Swartz said he was going to give us \$20 for the use of the garage.

Q. Did he give you the twenty dollars?

A. No, he never did.

Q. Did you see Mr. Swartz at any time subsequent to that?

A. It was several days later, Mr. Swartz came back into the store with Marshall.

723 Q. Do you know the date he came back into the store?

A. No. I would say it was 5 or 6 days, maybe a week later. He came back into the store. He told me on this oc-



casion he wanted to take the truck and told me that he didn't get the key the first time he put the truck into the garage the week before.

So I said, "Well, you will have to get it from Mr. MacLeod because he put it up. It was in the rooming house, all the time. He neglected to take it up."

I had before that met Mr. MacLeod since, so I wrote back a note "See Ken over at 215 East Erie." First I merely told him to see Ken. He asked me to write it down "See Ken 215 East Erie." I gave Mr. Swartz the note. He and Mr. Marshall went over to the rooming house.

Q. Did you go with them?

A. No, I did not. I stayed in the store.

Q. Were you at 215 East Erie with him on any occasion?

A. I was never at 215 East Erie with him on any occasion, or in the garage with him.

Q. Were you ever on July 20th at any garage on the north side of Chicago with Mr. Swartz and Mr. Marshall?

A. I have never been to any garage with Mr. Swartz and Mr. Marshall.

724 Q. On any occasion?

A. On any occasion.

Q. Were you on any occasion with Mr. Swartz and Mr. Marshall at any parking place other than a garage, or any parking lot or parking space behind any buildings on the north side of Chicago?

A. No, sir, I never was.

Q. You have no exact definite recollection of the day?

A. No, sir.

Q. That was involved in these two trips?

A. No, I have not.

Q. I call your attention particularly to Saturday July 22, 1950, and ask you if you know where you were on that particular day?

A. Yes, sir, I do.

Q. Do you have some reason for remembering that particular day?

A. Yes, sir, I spent it with my wife on her birthday, celebrating her birthday.

Q. Do you know where you spent the morning of that day?

A. The morning, it was from about 10:30 to 11 o'clock I spent it on my boat at Dyersey Harbor.

725 Q. How long did you stay at Diversey Harbor on that day?

A. We stayed at Diversey Harbor from 11:30 to approximately 4:30.

Q. You left there at about 4:30 that day?

A. Yes, sir, on that occasion.

Q. Who was in your company when you left there at 4:30, by the way?

A. My wife.

Q. Where did you go then?

A. We went over to her mother's for her birthday dinner.

Q. How long did you remain there?

A. I remained there until oh, approximately 8 or 8:30 that evening.

Q. Was Mr. Goldman present at that dinner?

A. Yes, he was.

Q. Did you ever meet Swartz and Marshall at Division and Michigan Avenue, in the City of Chicago—

Mr. Callaghan: Strike all of that. Strike the whole question and I will withdraw it.

By Mr. Callaghan:

Q. Did you, on July 22nd, 1950, at or about the hour of 4:30 p.m. meet Swartz and Marshall at Division and 726 Michigan Avenue, in the City of Chicago?

A. No, sir.

Q. Have you ever been convicted of a felony?

A. No, sir.

Q. What was your status in the army?

A. I was an officer on reserve.

Q. Now, Mr. Gordon, you have heard the witnesses Mehegan and McCormick testify here about some conversation that they say they had with you, if my memory serves me correctly, in November, 1950.

Did you have a conversation with Mehegan and McCormick?

A. Yes, I did.

Q. Do you remember the occasion of the first conversation?

A. The first occasion, Mr. Mehegan was not present. It was just Mr. McCormick in the Bankers Building.

Q. Was the conversation that you had at that time with Mr. McCormick reduced to writing?

A. No, sir.

Q. Did you hear Mr. McCormick testify about what that conversation was?

A. Yes, sir.

Q. Did that conversation occur as Mr. McCormick related it?

727 A. No. He changed it quite a bit.

Q. Will you tell us now what occurred at that conversation, what you said to Mr. McCormick and what he said to you?

A. Mr. McCormick in the offices of the FBI asked me if I knew about any stolen film.

Q. By the way, how did you happen to go to the FBI on that day?

A. I was on my way down to the store. They arrested me.

Q. Who is "they?"

A. Mr. McCormick and another agent.

Q. Took you into custody?

A. Yes, sir.

Q. All right, sir, go ahead.

A. They asked me if I knew anything about stolen film and I denied it.

They accused me of having stolen film in the garage, which I denied. As a matter of fact, they tried to bully me into saying I actually stole the film and, of course, I denied everything.

They made a proposition. They said, "If you can find out who stole it, we are not after you."

I denied everything.

He asked me about Mr. Marshall who I did not  
728 know at that time. I only had known him as Jim.

They showed me a picture which generally resembled him. I can see now it is him now.

Q. Did they show you any pictures of Swartz?

A. No, they did not. They asked me about Mr. Swartz.

Q. They asked you if you knew Mr. Swartz?

A. Yes.

Q. Did you tell them you did?

A. I told them I did.

Q. Did you on that occasion or on any other occasion say to Mr. McCormick after having made these denials, "Mr. McCormick, if I were to name everybody in Chicago to whom I had sold stolen merchandise I would have to name a lot of people?"

A. That is a lie.

Q. When did you talk to Mr. Mehegan and Mr. McCormick together?

A. It was a few weeks later. They called me on the telephone and asked me to come over to the FBI office after I had closed my store, which I agreed to do.

Late in the afternoon before I closed the store they barged into the store and called me into the back room.

Q. By the way, how big is that back room?

A. The back room of my store is about 7' wide at 729 the most and about 10' long.

Q. Will you tell us about this conversation you had with Mr. Mehegan and Mr. McCormick at your store?

A. They produced a red piece of paper with the name "Ken 215 East Erie."

Q. I now show you a document which has been marked here as Government's exhibit which is received in evidence.

Mr. Downing: It is in evidence.

By Mr. Callaghan:

Q. Which is in evidence as Government's exhibit 83, and ask you if you have ever seen that document before?

A. Yes, sir, I have.

Q. On that occasion that you are now testifying to?

A. Yes, sir.

Q. All right, sir, what was said and by whom?

A. Mr. McCormick or Mr. Mehegan, I don't recall. They alternated questioning me. Asked me if I knew what this piece of paper was.

I said, "Well, that is the address of our rooming house and that is my name on there."

He said, "Do you remember writing that yourself?"

I said, "No, I do not."

730 Q. Was there some question about your handwriting at that time?

A. Yes, sir. They asked me, "Is this your handwriting?"

I said, "Well, it could be." I said, "I am not positive."

He said, "Sign the piece of paper and we will check it."

And I said, "I do not sign any blank piece of paper. If you want my signature, it is on file at the bank."

Q. Did you tell him the bank where you did bank?

A. Yes. I told him the bank.

Q. Did you bank at that bank?

A. Yes, sir, I did.

Q. By the way, were you placed under arrest and re-



quired to give bail on the occasion when they took you into custody, at the first occasion when they questioned you?

A. No, sir, they released me.

Q. After questioning you they released you?

A. Yes, sir.

Mr. Callaghan: Will your Honor bear with me for just one moment?

731 By Mr. Callaghan:

Q. Now, did you ever sell to Albert Swartz or James Marshall any film?

A. No, sir, I never did.

Q. Did you ever receive any money in connection with any film from Mr. Swartz or Mr. Marshall?

A. No, sir.

Q. Did you ever give them any money in connection with any film?

A. No, sir.

Q. Did you ever on any occasion own, or possess any stolen film?

A. No, sir.

Q. Or have anything to do with any stolen film?

A. No, sir, I did not.

Mr. Callaghan: You may cross examine.

*Cross Examination*

By Mr. Downing:

Q. Mr. Gordon, you have an interest in this property at 215 East Erie Street, is that right?

A. No, sir.

Mr. Callaghan: Objected to as not proper cross examination.

The Court: In view of his sending these people 732 up there to the garage, I think it is proper.

Mr. Callaghan: I will withdraw my objection.

The Court: Proceed.

By Mr. Downing:

Q. You say you have no interest in that?

A. No, sir.

Q. Did you tell Mr. McCormick and Mr. Mehegan that you had an interest in the establishment?

A. I did at that time, sir.

Q. Now you say you have no interest in it?

A. No, sir.

Q. When you talked to Mr. Marshall or Mr. Swartz, you say that you had this conversation with them in the rear of your store?

A. Yes.

Q. Is that what is known as the office?

A. Yes.

Q. Who else was present at the time?

A. In the rear there was just Mr. Marshall, Mr. Swartz, and myself.

Q. Did you have any employee at the store at that time?

A. Yes, sir.

733 Q. And who was the employee?

A. One employee was Mr. Welcher, and my partner was out in front, Mr. Spitz.

Q. One of those two gentlemen was a white-haired man?

A. Yes.

Q. Which one is the white-haired man?

A. Mr. Welcher.

Q. During the time that Mr. Marshall and Mr. Swartz were talking to you, you say Mr. Marshall and Mr. Swartz were both in the back room.

A. Yes, they came into the back room after I called them back, both of them.

Q. At no time Mr. Marshall was out in front alone?

A. No, sir.

Q. With respect to the length of time that they were back there talking to you, how long was Mr. Marshall and Mr. Swartz back in the back room talking to you on that day?

A. I would say around, in the morning when they came in, it was around noon when they first came in. They were there about 15 or 20 minutes in the store.

Q. The entire time was spent in the back room, was it?

A. Yes.

Q. Was there a second time in which they both  
734 came into your store?

A. Later that afternoon.

Q. And did they go into the back room and talk to you at that time?

A. Yes, sir.

Q. And they both came back into the back, just like they did on the first occasion, did they?

A. Yes.

Q. Approximately how long were they in the back room? At that time?

A. Oh, approximately 20 minutes, a little longer than the morning.

Q. A little longer this time?

A. Yes.

Q. On that occasion Marshall did not spend any time out in front there, just like the first occasion?

A. I do not believe he did.

Q. He was back there in the back room with you and Swartz all the time?

A. He might have walked out while Swartz and I were discussing a wrist watch.

Q. It was not for any great length of time, is your recollection?

A. No, sir.

Q. You had an opportunity to see Mr. Marshall 735 during both of those visits?

A. Yes.

Q. You were rather close there in the back room with him and Mr. Swartz, is that right?

A. Yes.

Q. After that day did you see Mr. Marshall in Chicago again?

A. He came in several days later, yes, sir.

Q. Who was he with on this occasion?

A. Mr. Swartz.

Q. How long were they in the store on this occasion?

A. On this occasion they were probably in four or five minutes at the longest.

Q. Did they go into the back room together with you on this occasion?

A. No. Mr. Swartz just came into the back.

Q. What did you and Mr. Swartz have a conversation at this time about?

A. He wanted to pick up the film. Wanted to know how he could get the key for the garage, where it was at.

Q. How did you know where to get the key?

A. Mr. MacLeod had told me. In the meantime, that the key was still in the rooming house where he had 736 left it when he opened the garage and he wondered why they did not pick it up on the first occasion when they put the truck in.

Q. Did you have any interest in this property at that time?

A. Yes, I did.

Q. At that time you had some interest in the property?

A. Yes.

Q. At that time you had some interest in the property?

A. Yes.

Q. What was your interest in the property at 215 to 217 East Erie?

A. I was a partner with Mr. MacLeod.

Q. At that time what was your relationship? Did you split the profits with him?

A. Yes, sir.

Q. On what percentage?

A. 50-50.

Q. Are you still a partner with him?

A. No. I sold it to him pending my going into the army.

Q. When did you make that sale?

A. That was about 6 or 7 weeks ago.

Q. Did you use any partnership agreement or any bill-of-sale or anything of that nature?

A. Yes. He had a legal form which I signed, turning it over to him.

Q. How much did you pay him?

Mr. Callaghan: I object to all of these details as not being material.

The Court: Ask him what he paid, is sustained.

By Mr. Downing:

Q. Marshall and Swartz were with you in the store 3 or 4 minutes the second time, is that right?

A. Yes, sir.

Q. Did you give them a note as to where to go?

A. Yes.

Q. Is that the note that is listed here as Government's exhibit 83?

A. Yes, sir.

Q. Was that written by you?

A. Yes, sir.

Q. This is written on paper which you had there in the store on that day, is that right?

A. Yes.

Q. That is the same type of paper as illustrating Government's exhibit 91, is that right, sir?

A. Yes, sir.

Q. Now, at the time when Mr. Mehegan and Mr. McCormick came over to your store on November 29th when they showed you Government's exhibit 83, you told them you did not use any of that paper since 1946?

A. I told them I did not use it as bills.

Q. You told them you did not use it as bills?



A. Scratch pads, I told them we used it, as scratch pads.

Q. Then, what did you tell them?

A. They asked me if we used it as a bill.

I said no, we did not. It is not the Liberal Loan Bank any more.

Q. First they asked you whether you used it as a bill, is that right, sir?

A. Yes.

Q. Thereafter, do you recall them showing you exhibit, Government's exhibit No. 91?

A. No, sir, they never showed me that.

Q. They did not show this to you on that date, did they?

A. No.

Q. This is Government's exhibit 91?

A. That is right.

Q. And did you see them pick this up on the floor?

A. I saw them bend down and pick something up.  
739 I didn't know what they picked up.

Q. Neither Mr. Mehegan or Mr. McCormick showed you Government's Exhibit 91 on November 9th?

A. They bent down and shoved it into their pocket very quickly. I don't know whether they picked something off the floor, or not.

Q. Did you say anything to them?

A. No. They are supposed to be honorable gentlemen.

Q. Do you have any reason to believe there was anything of value on the floor they took?

A. No.

Mr. Walsh: Are you trying to create the impression he thought they took something.

I object.

The Court: Sustained.

By Mr. Downing:

Q. How many photographs did they show you of Mr. Marshall at the time they talked to you on November 8th?

A. One, one photograph.

Q. Would you recognize that photograph if you saw it?

A. Possibly.

Mr. Callaghan: I submit, if your Honor please, on the Government's case we tried very hard to get these photographs. They did not have them. That is not proper cross examination.  
740

The Court: Objection overruled.

Mr. Walsh: These pictures are not identified as the ones being shown.

The Court: Are you making an objection?

Mr. Walsh: I want to add to Mr. Callaghan's statement.

The Court: Objection overruled.

Mr. Downing: Mark these as Government's exhibits 95, 96, 97, and 98.

Mr. Callaghan: May I examine what he is about to show to the witness?

Mr. Downing: Certainly. I will be glad to show you.

The Court: Certainly.

(The said photographs were marked as requested).

Mr. Downing: Let the record show I am handing Mr. Callaghan Government's exhibits 95 through 98.

Mr. Walsh, have you looked at these?

Mr. Walsh: No. I will look at them when you take them to use on my client.

741 By Mr. Downing:

Q. I will show you Government's exhibits 95, 96, 97 and 98. Commencing with 95, I ask you if you have ever seen that photograph before?

A. No, sir.

Mr. Callaghan: In fairness to the witness, your Honor please, he should show him all these photographs and ask him which one he is showing him. He is showing him only one photograph.

The Court: I think he is proceeding properly.

By Mr. Downing:

Q. I will show you Government's exhibit 96 and ask you if you have seen that photograph before?

A. No, sir.

Q. I will show you Government's exhibit 97 and ask you if you have seen that photograph before?

A. I believe that might have been the one in the larger version.

Q. In a larger version?

A. They showed me a large picture.

Q. I will show you Government's exhibit 98 and ask you if you have seen that one before?

742 A. No, sir.

Q. So of the four I have shown you, Government's exhibit 97, will you say that exhibit on a smaller scale was shown to you on November 8th?

A. I would not say positively, no, sir.

Q. Have you any definite recollection as to either of the other three?

Mr. Callaghan: I submit he has answered the questions about this.

The Court: Sustained.

By Mr. Downing:

Q. Will you say this was not shown to you on November 8th?

Mr. Callaghan: I object to this.

By Mr. Downing:

Q. Government's exhibit 97?

A. No, I would not say it was not shown to me.

Q. And at the time you were shown the photograph of James Marshall on November 8th, you had seen him in your store as you previously testified, is that right?

A. Yes, sir.

Q. And that was on the two occasions on the one day, and on the one occasion on the second time, is that right, sir?

743 A. Yes, sir.

Q. Now, did you see this truck load, did you see the truck load of film that they brought?

A. No, sir, I never had any occasion to see that truck load of film.

Q. Did they describe the truck to you?

A. When I tried to find out the size for our garage, they described it, yes.

Q. Who described it?

A. Mr. Marshall described it.

Q. What did he say the description of the truck was?

A. He said it is like an old newspaper truck, newspaper delivery truck.

Q. Did he say whether it was a panel or stake body truck or did he tell you at that time?

A. I understood what he meant.

Q. What did you understand?

A. Old delivery trucks.

Q. That is an old panel type truck?

A. An old panel type truck, yes, sir.

Q. Did he tell you the type of truck, that is, whether it was a Ford or Chevrolet?

A. No, sir.

Q. Did he tell you what year the truck was made?

744 A. No.

Q. Did you go up to 215 to 217 into the garage at any time while this truck was there?

A. No, sir.

Q. Did you talk to Mr. MacLeod about the truck at any time?

A. I called him and asked him if it would fit in there the first time. He said he thought so.

Q. What description of the truck did you tell him?

A. I told him an old newspaper type delivery truck. He said he thought it would fit in.

Q. You stated that you took over this business in 1946? Did you buy the business on that date?

Mr. Callaghan: Which business are you talking about?

Mr. Downing: Whichever business he took over.

Mr. Callaghan: There is two businesses, one on Erie Street and there is a jewelry store.

The Court: Yes, state.

By Mr. Downing:

Q. With respect to the jewelry store business at 21 E. Adams St., your testimony was you took that over 745 in 1946?

A. Yes.

Q. Did you buy the business on that day?

A. Yes, sir.

Q. From whom did you buy it?

A. The Government.

Q. From the government?

A. Yes.

Q. From what office of the government did you buy it from on that day?

Mr. Callaghan: I submit it is immaterial, if your Honor please.

The Court: Sustained.

By Mr. Downing:

Q. Did you operate the business from 1946 until February of 1951?

A. Yes, sir.

Q. Was it a corporation?

A. A partnership.

Q. What was the partner's name?

A. Allan Spitz.

Q. For the entire period of time from 1946, what part of 1946 did you acquire ownership?



746 Mr. Callaghan: I submit there are two questions.  
By Mr. Downing:

Q. What part of the year 1946 did you acquire ownership?

A. It was around July.

Q. July of 1946?

A. Yes.

Q. From July of 1946 to February of 1951, was this Mr. Spitz your partner?

A. Yes.

Q. Is he any relative of yours?

A. He is.

Mr. Callaghan: I submit it is immaterial.

The Court: I think it is, too. At least it is not proper cross examination.

Mr. Downing: If the Court please, we have no idea of anticipating what else is going to come on here. We can't call the defendant Gordon as a witness.

The Court: You did not go into it on direct.

Mr. Downing: This is the defendant.

The Court: He is entitled to get what personal history he wants, but on the other hand, this is something he  
747 does not get and it is not material. I don't think it becomes proper because he happens to be the defendant.

Objection sustained.

Mr. Downing: May I just make this statement, your Honor? After all, the man stated he took over this business in 1946. He further stated he was in business until February, 1951. Now, I think, as I say, we cannot anticipate what else might be put on in the way of business. Naturally, the Government can't call the defendant as a witness.

Mr. Callaghan: He is on the stand as a witness. You don't have to call him.

The Court: Wait.

Mr. Callaghan: I am sorry.

Mr. Downing: I am trying to determine certain facts which may or may not be later elicited in the process of the defense of this case. I think this is desirable for us. At least, that question is certainly not immaterial, or certainly not prejudicial.

The Court: I have already ruled it immaterial.

Mr. Walsh: I object to the remarks of counsel.

747a The Court: There is nothing before the Court.

Mr. Walsh: There is this, your Honor. I would like to make this motion.

The Court: Everyone is making statements. There is nothing before the Court. I have already ruled on the question and sustained the objection of Mr. Callaghan. We will have a time for argument when the case is over.

Mr. Walsh: May I make a motion for a mistrial, your Honor, on the remark of counsel's statement that he cannot call the defendant as a witness.

The Court: The motion is denied.

Mr. Walsh: It is an objection on behalf of Mr. MacLeod.

By Mr. Downing:

Q. How long have you known Albert Swartz?

A. Approximately 4 or 5 years, since I opened the store.

Q. You have done business with him off and on up until how long?

A. Oh, until, the last time he was in there and tried to sell me film.

Q. That was the last time that you did business with  
748 Albert Swartz?

A. Yes, sir.

749 Q. Now, as a matter of fact, Mr. Swartz was in Chicago and had talked to you about some matters in the early part of July before he came in about the film; do you recall that?

A. No, sir.

Q. Do you recall seeing Mr. Swartz—

Mr. Callaghan: Wait a minute. I object to that statement, Counsel, and I submit it is not a proper question.

The Court: Well, the question was answered. It may stand.

Proceed with another question.

By Mr. Downing:

Q. Do you recall seeing Mr. Swartz in Chicago about sometime immediately before or after July 4th of 1950?

A. Well, he was in Chicago approximately six, seven weeks before he was in on the occasion I described.

Q. On this transaction that you testified to?

A. That's right.

Q. Now, at that time was Marshall with him?

A. No, sir.

Q. To refresh your recollection, do you recall whether at that time he was on a vacation in Chicago?

A. I don't believe he was.

750 Q. At least you don't recall that, is that right?

A. No.

Q. Now, after he was here in Chicago on that time, and before he returned with Marshall, as you testified, did you have occasion to make a telephone call to him in Detroit?

Mr. Callaghan: I object to this, Your Honor, as not being proper cross examination. It is a matter that is not material to this inquiry, something that happened six or seven weeks prior to the incidents in this trial.

The Court: The objection is overruled.

The Witness: Which period?

By Mr. Downing:

Q. Immediately before the first time he came here with Marshall, and subsequent to the time you said you saw him before when he was here with Marshall?

A. I never made any telephone call to Mr. Swartz.

Q. During the second week in July, about July 12th, did you have occasion to call Mr. Swartz and talk to him about some film?

A. No, sir.

Q. As a matter of fact, on July 20th, when the first time Mr. Swartz came to Chicago—

751 Mr. Callaghan: Wait a minute, please. I object to that because it assumes something about which this witness has not testified.

The Court: Let him finish the question. I cannot rule on it until I hear the question.

Mr. Downing: Strike that phase of the question.

By Mr. Downing:

Q. Now, you had a conversation with Swartz on the day he first came here with Marshall, is that right?

A. Yes, sir.

Q. And at that time did you tell Swartz that you did not care to deal with too many people, that you would like to deal with him exclusively on this film?

A. No, sir.

Q. Did you ever have such a conversation?

Mr. Callaghan: I submit that is not a fair question unless counsel is prepared to prove it on rebuttal.

The Court: As you making an objection?

Mr. Callaghan: Yes, sir, I object to it on that basis.

The Court: Objection overruled.

By Mr. Downing:

752 Q. Did you ever have such a conversation with Mr. Swartz?

A. No.

Q. I believe you testified that Mr. Swartz never paid you any sum of money in connection with any film?

A. No, sir.

Q. And you are referring to at any time, is that right?

A. Yes, sir.

Q. As a matter of fact, in 1950, in July, didn't Mr. Swartz pay you \$125 per case for 8 millimeter film?

A. I never sold him any film, no, sir.

Q. And did you sell him any 116 film for \$30 to \$40 a case?

A. I never sold him any film.

Q. Did you sell him any 16 millimeter film for \$75 a case?

A. No, sir.

Q. When was the last time that you saw Mr. Swartz?

A. The last time I saw Mr. Swartz was on the second occasion when he came in.

Q. Do you know Mr. Swartz is deceased at the present time?

A. Yes, sir.

753 Mr. Downing: That is all.

Mr. Callaghan: That is all.

The Court: Is there any redirect?

Mr. Callaghan: That is all.

The Court: You may step down.

(Witness excused.)

754 KENNETH J. MAC LEOD, one of the defendants herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Walsh:

Q. Will you state your name, please?

A. Kenneth J. MacLeod.

Q. Where do you live, Mr. MacLeod?

A. 1150 North Lake Shore Drive.

Q. How long have you lived there?



A. Not quite three years.

Q. You are one of the defendants in this case?

A. I am.

Q. How many persons reside in that building?

A. Something between 50 and 70, I would imagine.

Q. Are you a tenant?

A. I am.

Q. Do you have any other dominion or control over those premises?

A. No, sir.

Q. Now, what is your business or occupation now?

A. I operate a residential girls' club.

Q. That is a hotel or rooming house?

A. It could be classified as either, but mostly as a 755 rooming house.

Q. Where is that located?

A. 215 East Erie Street.

Q. How long have you been engaged in that business?

A. It will be two years the 21st of June.

Q. You were present in the courtroom when Mr. Trainer testified, were you not?

A. I was.

Q. And did you obtain your lease of those premises from him?

A. Yes, sir.

Q. And at the time you obtained that lease, was there another person who owned the business?

A. Yes, there was.

Q. That was being operated then. Who was that person?

Mr. Downing: Objection, Your Honor. It is immaterial.

The Court: Again, it is a matter of personal history of the defendant. If he wants to go into that much of it, we will permit him to do so. On that much that I permit him to go into, you can cross examine.

By Mr. Walsh:

Q. Who was that person?

756 A. Miss Catherine T. Ryan.

Q. Did you purchase her business that she operated in the premises which you had leased?

A. Yes, I did.

Q. And did you have a financial associate in that transaction?

A. I had borrowed the money then from Mr. Gordon at that time, and shortly after the transaction was closed, we agreed to go into partnership with that money.

Q. And did you devote your efforts and time to the business?

A. I did.

Q. And did he devote any time or effort to the business, ordinarily?

A. No, sir.

Q. He had a financial interest, and you had a working interest?

A. That is correct.

Q. Now, is he still your partner in the business?

A. No, sir.

Q. And when did that relationship end?

A. April 2, 1951.

Q. And how did it end?

A. I purchased his interest.

757 Q. And you are now the sole owner of the business?

A. That is correct.

Q. And you are operating on the same lease that Mr. Trainer described?

A. Yes, sir.

Q. Now, you were his partner during July of 1950, were you not?

A. I was.

Q. And directing your attention to that month, tell us what those premises consisted of, how many rooms there are?

A. There are approximately 74 rooms occupied by nurses, stenographers, school teachers and professional women and students.

Q. Now, are there any garages at the rear of the premises that you leased?

A. Yes, sir, there is a garage.

Q. I will show you Government Exhibit 87 for identification, and ask you if that truly and correctly portrays the garage at the rear of the premises that you leased, or one view of it?

A. Yes, sir.

Q. That is Government Exhibit 87. Now, how much room is there in that garage, or what are the dimensions, roughly, or to the best of your judgment?

A. About 25 feet wide, and possibly 20 feet deep in the garage proper. That is where the automobile space of the garage is.

Q. Now, during the month of July, was that garage occupied—well, is there anything upstairs of the garage space?

A. Yes, sir.

Q. And what is upstairs?

A. An apartment.

Q. And was that occupied during July of 1950?

A. Yes, sir.

Q. Now, was the garage during July of 1950?

A. Yes, sir.

Q. And will you tell us what you know about that?

A. I don't recall what particular date it was, but late in the afternoon one day in July I received a call from Mr. Gordon. He asked—

Q. A telephone call?

A. It was a telephone call, yes.

Q. You recognized his voice?

A. Yes, sir.

Q. You are familiar with it?

A. Yes, sir, I am familiar with it.

759 Q. Yes?

A. He asked me if there was enough space in the garage to park a truck, and I told him yes, if it was a small enough truck, that it wouldn't take a large truck, and he said, would a newspaper delivery truck fit in there, and I told him it would.

He said that someone would be out to put their truck in there after awhile, and I told him that I couldn't hang around, that I had other business to take care of, and he instructed me to leave the lock unlocked, and hanging in the hasp, and that the people would come in and put the truck in themselves. I did that.

Q. Now, what was the garage usually used for prior to that time by you?

A. Storage.

Q. Storage of what?

A. Furniture, lumber, paint, supplies, just about anything—anything that was used.

Q. Material that was used in the operation of the rooming house or the other quarters?

A. That is right.

Q. Maintenance materials, principally?

A. Well, there was some furniture that the tenants had that was in there.

760 Q. Now, did you have frequent occasion to in and out of that garage prior to this time?

A. I went in and out of it quite often. I wouldn't say it was frequent, but occasionally.

Q. Did you take supplies in and out?

A. Yes.

Q. And when you entered that garage, which door did you use during the month of July, usually?

A. Usually I used both of those doors, both the big door and the small door. Usually I would say I used the large door, because getting things out would be easier in that door.

Mr. Downing: May the record show which exhibit he is referring to?

Mr. Walsh: Exhibit 87.

By Mr. Walsh:

Q. Now, did you see that truck while that was in that garage?

A. Yes, sir.

Q. What kind of a truck was that? Describe it.

A. It was an old truck. I think it was a wooden frame side—I am not sure whether it was a wood or metal—sort of a panel. I don't know what make it was, a Ford or Chevy or something like that, some light make, quite

761 old.

Q. And what color was it?

A. I don't know.

Q. Did it have any name on the side?

A. Yes, it had a name on the door.

Q. What was that name?

A. The last name was White.

Q. Was there any address under the name?

A. Yes.

Q. Do you recall that?

A. No, I don't.

Q. Did it have license plates?

A. I didn't look. I don't know.

Q. Well, now, you weren't present when the car was put into the garage in the first place, is that right?